PROFESSIONAL SPORTS ANTITRUST IMMUNITY

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

S. 2784 and S. 2821

AUGUST 16, SEPTEMBER 16, 20, AND 29, 1982

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PROFESSIONAL SPORTS ANTITRUST IMMUNITY

MONDAY, AUGUST 16, 1982

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:33 a.m., in room 2228, Dirksen Senate Office Building, Hon. Strom Thurmond, (chairman of the committee) presiding.

Present: Senators Heflin, Specter, DeConcini, Leahy, and Simpson.

Staff present: Stephen Cannon, Marcy Tiffany, Jock Nash, Bruce Cohen, Mary Louise Westmoreland, Ally Milder, Boyd Hollingsworth, Ed Baxter, Romano Romani, Arthur Briskman, Wes Howard, Marge Baker, John Podesta, Mary Troland, and Kathy Zebrowski.

OPENING STATEMENT OF HON. STROM THURMOND, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA, CHAIRMAN, COMMITTEE ON THE JUDICIARY

The CHAIRMAN. The committee will come to order.

Today, the committee begins hearings on legislation that addresses the antitrust implications of relocation of professional sports teams and the sharing of team revenue. While the two bills we consider differ in approach, they clearly reflect concern with team movement when it occurs against both the wishes of the city it desires to leave as well as those of the league of which it is a member. Only one bill, S. 2784, addresses team revenue sharing.

Those who support this legislation suggest the need for maintaining stable ties between local communities and their teams, pointing to the many large investments, both financial and emotional, at stake. Those opposed to this legislation argue that professional sports leagues should be granted no special antitrust exemption permitting them to control team movement.

Rather, it is argued that such decisions should remain squarely within our free market system and subject to the laws of open competition. The arguments for and against revenue sharing center around the need to insure competitive play through reasonably equivalent financial team resources.

We obviously do not consider this legislation in a vacuum. The Oakland Raiders litigation has brought the question of team movement to the attention of the entire Nation. Both bills we consider today impact the *Raiders* case.

We are mindful of our responsibility to weigh the arguments of all concerned and determine where the public interest rests in this matter. That is our primary interest—the public interest. As chairman of this committee, I am committed to a full and fair examination of this legislation, and will work to insure that both proponents and opponents have equal opportunity to present their views. While today's testimony focuses on professional football, the committee will conduct additional hearings after Labor Day to examine the impact of this legislation on other sports.

Senator Specter, do you have an opening statement?

OPENING STATEMENT ON HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator **Specter**. Yes. Thank you, Mr. Chairman; just a comment or two. I want to commend the chairman for agreeing to these hearings so promptly on a question which is of major importance to many, many people in this country.

I think the legislation which has been introduced by Mr. DeConcini and myself focuses on one issue of owners' interests versus fans' interests. My own sense is that there are two or three generations of fans who are still concerned about the movement of the Brooklyn Dodgers to Los Angeles and the New York Giants to San Francisco.

There is an understanding when a team is a failing team, as, for example, on the moves of the St. Louis Browns or the Philadelphia Athletics, that it cannot be avoided. But my own sense has been that there is a fans' interest and that the football leagues are affected with the public interest.

I think it should be made clear at the outset that the legislation which limits movement is not a restriction on private property rights, because the football owners have voluntarily given up the right to move, except with the consent of three-fourths of the league, and it is the antitrust laws which have limited that free use of property rights when it is against public policy.

So, the legislation which I have introduced, which would restrict the antitrust laws, does not go to free enterprise and private contract rights, but only to a limitation on the antitrust laws.

I frankly have some doubts myself as to the general wisdom of application of the law to a pending case, or, as some put it, to a retroactive application. I think this situation is different from contribution in antitrust cases, at least from my point of view, where sophisticated litigants did not settle those cases, and the Raiders controversy was not settlable.

I retain, as the chairman has outlined, an open mind on that question, and it may be that these hearings will prove persuasively that whatever legislation, if any, is enacted ought to apply in the future only. But I think these hearings are important, and, like the chairman, I personally am committed to seeing a full and complete hearing with all sides being represented before any judgments are made.

Thank you, Mr. Chairman.

The **Chairman**. The distinguished Senator from Alabama.

OPENING STATEMENT OF HON. HOWELL HEFLIN, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator **Heflin**. Mr. Chairman, I am most appreciative to you for calling these hearings on this important legislation. I congratulate Senator DeConcini for his leadership in introducing Senate bill 2784. However, I am a reluctant cosponsor of Senator DeConcini's bill. I say reluctant because this Senator desires a much stronger final product.

Professional football is dependent upon a league arrangement. Antitrust policies ignore the dependency of teams on each other, and the inherent need for league rules on how the game is played both on and off the field.

This bill has a very narrow answer to many complex problems. The only thing that S. 2784 does is allow the leagues to keep a team in an existing location; second, to establish rules for the division of league revenues; and, third, makes it applicable to pending actions, which we all know means the *Oakland Raiders* case.

I applaud these goals. However, my problem is that it does not, first, confirm that member clubs of the NFL are entitled to act together to conduct the internal operations of the league and to determine the standards for ownership of member clubs.

Second, it does nothing to recognize the joint venture nature of the league, nor to dispel the standard rules applicable to traditional horizontal business competitors, which professional sports leagues are not.

Third, it does nothing to strengthen the authority of the league to forcefully handle the apparent drug problem within the NFL. This is a major problem that must be addressed. Our youths are hero worshippers. Their heroes are athletes, primarily football athletes.

I think the best way to solve this problem is within the league; give the NFL the authority, give them a chance to solve their own problems, allow them an opportunity to clean their own dirty linen.

To sum up, the NFL is not composed of economic competitors. They are engaged in a common business operation. To my mind, a franchise is awarded to a community, not to an individual. The community in most instances provides a stadium at the taxpayers' expense and fans' expense.

Antitrust policies which permit individual team owners to ignore the league's relationship and act as if they were sole proprieters do not reflect free enterprise principles, and they do not serve the public interest. Instead, as Senator Specter noted in introducing his legislation, free enterprise principles would require that league agreements voluntarily entered into by league members should be enforced according to their terms.

Free enterprise does not require the destruction of business partnerships or joint ventures. It does exactly the opposite. It demands that voluntary partnerships and joint ventures be permitted to function on the terms agreed on by the participants.

One of the distressing aspects of recent court developments is that in the name of antitrust, courts are rewriting a voluntary

NFL partnership agreement and replacing free enterprise with regulations of league conduct through judicial declaration.

Mr. Chairman, I look forward to the testimony today and am hopeful that the U.S. Senate will be able to consider meaningful, strong legislation in this area.

The CHAIRMAN. The distinguished Senator from Arizona.

OPENING STATEMENT OF HON. DENNIS DeCONCINI, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator DECONCINI. Mr. Chairman, ladies and gentlemen, and distinguished colleagues I would like to thank you, Mr. Chairman, for agreeing to hold these hearings on such short notice. As usual, Chairman Thurmond has graciously consented to give of his own time and effort on a matter of importance to some members of this committee. The chairman has also assigned his staff to organize and manage these hearings, and I would like to extend special thanks to Steve Cannon, who has done a remarkable job on such short notice.

My staff and I have been working, Mr. Chairman, for a number of months to develop legislation that would protect communities and fans from arbitrary and unilateral decisions by owners, while simultaneously not affecting other sports antitrust issues, including labor-management relations. I am personally pleased that we have achieved this dual objective, although the purpose of these hearings, in part, is to explore that contention.

I am hopeful that the witnesses will be able to provide us with alternative approaches if they cannot agree with the ones we have chosen.

On July 28, Senators Heflin, Simpson, Huddleston, Bentsen, and I introduced S. 2784, the Major League Sports Community Protection Act. The purpose, as I will suggest in more detail shortly, is to clarify congressional intent regarding the application of antitrust laws to certain types of major sports league practices and decisions.

Those of us who have been involved in this legislation from the outset are primarily concerned about the impact of recent court decisions on communities that have or expect to receive major sports league franchises.

Unfortunately, the opponents of this legislation have engaged in a series of scurrilous attacks on a number of Members of Congress. The unifying thread in these attacks seems to be that the NFL has bought off Senators and Congressmen through the promise of franchises.

Frankly, Mr. Chairman, I have never seen in my 6 years in the Senate anything quite like this. One can only suppose that this type of attack is the refuge of those who have a position that cannot be defended or sustained in a normal manner, and I resent it as one Member of this Senate.

The truth of the matter is this: Those of us involved in the legislation generally fall into two categories: First, Senators and Congressmen from States and communities that already have major league sports franchises; second, those of us from States and communities that will shortly receive such franchises.

Although the opposition has attempted to raise a number of false issues and red herrings, the basic issue is simply the protection of communities and fans from financially and emotionally disruptive, arbitrary decisions by team owners.

As will become clear, our legislation does not force a team to remain in a community, but it does allow normal and usual league rules governing such decisions to remain in effect.

Recent court decisions under the antitrust laws have placed in jeopardy longstanding league rules governing the relocation of sports franchises. If these decisions are upheld, an individual owner could be free to move teams—even well-supported teams—without regard to the community, fan or overall league interest. While such a result might benefit some team owners, it would unfortunately leave local taxpayers in many communities the responsibility to pay off public bonds issued to construct stadiums and other sports facilities. This financial impact would be compounded by the emotional loss felt by thousands of loyal fans.

It is ironic that it has become necessary for the Congress to consider special legislation in this area. The primary goal of the conspiracy provisions of the antitrust law is to prevent unfair cooperation among economic competitors. The provisions were deliberately written in a broad fashion so as to allow the court the ability to apply the basic principles which stand behind the provisions to differing factual situations.

Clearly, it was not intended that these provisions be applied inflexibly to prevent the members of joint enterprises, such as professional sports leagues, from enforcing reasonable rules designed to protect the interests of fans and communities.

Clearly, antitrust decisions which permit highly successful and well-supported teams to abandon a community at the whim of a single owner do not serve the public interest. Nevertheless, current applications of antitrust principles to sports leagues allow individual club owners to dictate league policy and to elevate narrow club interests over leaguewide and community interests. That is why I introduced S. 2784.

It is with extreme caution that I approach the task of clarifying our antitrust laws. Yet, the recent efforts of the Oakland Raiders and the San Diego Clippers to abandon their respective communities have shown a clear need for this legislation.

S. 2784 is a narrowly drafted response intended to clarify the intent of Congress that the antitrust laws will not apply to league decisions preventing teams from abandoning their home communities and revenue sharing arrangements designed to promote comparable economic opportunity among member clubs.

Let me emphasize for the record that this legislation will have no effect on labor-management relations or any other sports antitrust issues. The language of the bill makes it clear that it will have absolutely no effect on the ongoing labor negotiations affecting the National Football League.

Unless the Congress acts swiftly on this important legislation, communities will run the risk that stadiums and other sports facilities built with taxpayers' funds will be darkened. Unless Congress acts, every team owner will be free to auction his team for sale to the highest bidder, regardless of how well the team has been supported at home.

Unless Congress acts, the revenue sharing arrangements that make it possible for communities of all sizes throughout the Nation to support professional sports teams may be subject to legal challenges or misguided standards.

For these reasons, S. 2784 has the strong support of the mayors in cities across the country, including the mayor of Phoenix, Ariz., in my home State. I am pleased to report that the companion bill in the House has over 130 cosponsors, and that its distinguished sponsors are here this morning. The House bill is similar to S. 2784 and is rapidly gaining support in the House.

These mayors and other elected officials realize the important economic and other intangible benefits that the presence of professional sports teams bring to a community.

I look forward to the hearings, Mr. Chairman, and the testimony which will be presented this morning and later. I urge the committee to act expeditiously on this very important legislation. Thank you, Mr. Chairman.

[The bills, S. 2784 and S. 2821, follow:]

II

97TH CONGRESS
2D SESSION

S. 2784

To clarify the application of the antitrust laws to professional team sports leagues, to protect the public interest in maintaining the stability of professional team sports leagues, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 28 (legislative day, JULY 12), 1982

Mr. DECONCINI (for himself, and Mr. HEFLIN, Mr. SIMPSON, Mr. HUDDLESTON, and Mr. BENTSEN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To clarify the application of the antitrust laws to professional team sports leagues, to protect the public interest in maintaining the stability of professional team sports leagues, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Major League Sports Community Protection Act of 1982".

FINDINGS AND DECLARATIONS

SEC. 2. The Congress finds and declares that the public has an interest in preserving stability in the relationship between professional sports teams and the communities in which they operate and in encouraging professional team sports leagues to promote the economic and geographic stability of their member clubs: Therefore, be it enacted, that—

(1) It shall not be unlawful by reason of any provision of the antitrust laws for a professional team sports league and its member clubs—

(a) to enforce rules authorizing the membership of the league to decide that a member club of such league shall not be relocated; or

(b) to enforce rules for the division of league or member club revenues that tend to promote comparable economic opportunities for the member clubs of such a league.

INAPPLICABILITY TO CERTAIN MATTERS

SEC. 3. Nothing contained in this Act shall—

(a) be deemed to change, determine, or otherwise affect the applicability or nonapplicability of the labor laws, the antitrust laws, or any other provision of law to the wages, hours, or other terms and conditions of player employment within any sports league, to any player employment matter within any sports league, or to any collective bargaining rights and privileges of any player union within any sports league;

(b) exempt from the antitrust laws any agreement to fix the prices of admission to sports contests;

(c) exempt from the antitrust laws any predatory practice or other conduct with respect to competing sports leagues which would otherwise be unlawful under the antitrust laws; or

(d) modify any existing Federal statutes relating to the television practices of sports leagues, or change, determine, or otherwise affect the applicability or nonapplicability of the antitrust laws or communications laws to any form of joint dealing practices by sports leagues with respect to the sale of cable or subscription television.

FEDERAL PREEMPTION

SEC. 4. Notwithstanding any other provision of law, no State or political subdivision thereof shall establish, maintain, or enforce any regulation of commerce that imposes any limitation on the collective conduct of professional team sports leagues or their member clubs authorized by this Act.

APPLICABILITY TO PENDING ACTIONS

SEC. 5. (a) This Act shall apply to all actions commenced under the antitrust laws of the United States after the date of enactment of this Act.

(b) This Act shall also apply to all actions commenced under the antitrust laws of the United States prior to the date of enactment of this Act unless—

(1) the judgment in an action is final and unappealable on or before the date of enactment of this Act; or

(2) the court determines in an action involving collective conduct of a professional team sports league in which a release or covenant has been signed prior to the date of enactment of this Act that it would be manifestly unjust, in light of subsection (c) of this section and other circumstances, to apply this Act in such action to any unresolved claim of any party not a member club of such league.

(c) No agreement to settle, compromise, or release a claim which has been signed by the parties prior to the date of enactment of this Act may be rescinded, disapproved, reformed, or modified by the parties or by the court because of the application of the provisions of this Act, except upon the written consent of all the parties thereto.

DEFINITIONS

SEC. 6. For purposes of this Act, the term "professional team sports league" means the organized professional team sports of basketball, football, hockey, or soccer.

○

97TH CONGRESS
2D SESSION

S. 2821

To protect the public interest and to clarify the application of antitrust laws with respect to the location of professional football teams.

IN THE SENATE OF THE UNITED STATES

AUGUST 9 (legislative day, JULY 12), 1982

Mr. SPECTER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To protect the public interest and to clarify the application of antitrust laws with respect to the location of professional football teams.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Professional Football Stabilization Act of 1982".

SEC. 2. (a) The Congress finds that—

(1) professional football teams achieve a strong local identity with the people of the cities and regions in which they are located, providing a source of pride to their supporters;

(2) professional football teams provide a valuable form of entertainment in the cities and regions in which they are located;

(3) substantial tax revenues and employment opportunities derive from the operation of professional football teams to the cities and regions in which they are located;

(4) the public, through a municipal stadium authority (which may be a city or county agency, or a municipal corporation) generally authorizes capital construction bonds to build a stadium, while the team's lease or use agreement generally sets rent to cover only operating costs of the stadium, without reimbursing the public for construction costs; and

(5) professional football teams are invested with a strong public interest.

(b) The Congress, therefore, finds and declares that professional football teams are affected with a strong public interest and that it is the national policy to discourage the relocation of professional football teams receiving local support.

SEC. 3. The Act of September 30, 1961 (75 Stat. 732; 15 U.S.C. 1291–1295), is amended—

(1) by redesignating section 4 as section 7 and striking out all after section 7, as redesignated;

(2) by inserting after section 3 the following:

"SEC. 4. No professional football team which has played its home games in a metropolitan area for six continuous years or more shall relocate unless—

"(1) one or more of the other parties to the stadium lease agreement fails to comply with a provision of material significance to the agreement, and such noncompliance cannot be remedied within a reasonable period of time;

"(2) the stadium in which the team wishing to move presently plays is inadequate for the purposes of properly and competitively operating the team, and the stadium authority demonstrates no intent to remedy such inadequacies; or

"(3) the team has incurred an annual net loss for at least three consecutive years immediately preceding the relocation, or has incurred losses in a shorter period that endanger the continued financial viability of the team.

"SEC. 5. The antitrust laws, as defined in section 1 of the Clayton Act, and the Federal Trade Commission Act, shall not apply to any joint agreement by or among persons engaging in or conducting the organized professional sport of football which restricts the movement of any member team in accordance with the criteria provided in section 4.

"SEC. 6. Any government authority in a metropolitan area from which a professional football team relocates may bring a civil action for damages and equitable relief if such relocation does not comply with the criteria provided in section 4.";

(3) by inserting after "section 1" in section 7, as redesignated, "and section 5";

(4) by inserting after section 7, as redesignated, the following:

"SEC. 8. For purposes of this Act:

"(1) The term 'persons' means any individual partnership, corporation or unincorporated association, or combination or association thereof.

"(2) The term 'relocate' means to change the location in which a team plays its home games from one metropolitan area to another.

"(3) the term 'government authority' means any unit of general local government, or other government agency, or authority which exercises regulatory authority with respect to a professional sports team.

"(4) the term 'metropolitan area' means a standard metropolitan statistical area.".

○

The CHAIRMAN. We are honored by having two distinguished Congressmen here today. Mr. Hyde was to be here too, but I do not see him. Is Mr. Hyde here?

[No response.]

The CHAIRMAN. We will now be pleased to hear from these two Congressmen—you can come up singly or come up together to the table—the Honorable Pete Stark from the Ninth District of the State of California, and the Honorable Don Edwards, Congressman of the Tenth District of California.

We are pleased to have you with us. You may proceed.

STATEMENT OF A PANEL CONSISTING OF HON. DON EDWARDS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND HON. FORTNEY H. STARK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. EDWARDS. Thank you very much, Mr. Chairman, and I join your colleagues on the distinguished committee in thanking you for holding these very important hearings. And I want to say amen to what your colleagues, Senator Specter, Senator Heflin, and Senator DeConcini, said. Their statements were excellent on this very important subject.

We do have a situation that urgently requires congressional action. You have a Federal court in Los Angeles that approves the move of the Oakland Raiders to Los Angeles, and then you have a California Supreme Court decision that says that Oakland can keep the Oakland Raiders in Oakland under the State's eminent domain rule.

So, this is an irreconcilable situation and Congress should act to settle this thing. Otherwise, we are going to have years and years of controversy and uncertainty.

Mr. Chairman, there is no unfairness at all in applying this legislation and the legislation introduced by Senator DeConcini and Senator Specter, which is very similar to that introduced by Congressman Hyde and Congressman Stark and I.

When the Raiders joined the National Football League, they agreed to operate in Oakland and to abide by the rules and the constitution of the National Football League. They have been immensely successful in Oakland; 12 years in a row, they have been sold out, and they will be sold out for the next 25 if they can just stay in Oakland.

It is very unjust that the Raiders should take advantage of this bizarre verdict by a Los Angeles jury—and I point out that it is a Los Angeles jury—to renege on the contract and the agreements that they have with the National Football League, the purpose of which is to make more money in a larger city.

What Congress would be doing in enacting this legislation is confirming Congress previous statements that well-supported, financially successful clubs should not arbitrarily desert their loyal fans and publicly-financed stadiums—and these stadiums, Mr. Chairman, are built specifically for the use of these teams—and then just move away arbitrarily for more money.

Congress has said this several times, and that is what the National Football League is trying to do insofar as the Oakland situation. And Congress should confirm the propriety of what the National Football League wants to do in Oakland.

The second important point, Mr. Chairman, is that—and this was made very clear by Senator DeConcini—this legislation has nothing to do with any labor-management issue. I certainly would oppose, and I know that Mr. Hyde and Mr. Stark would oppose and certainly not sponsor any legislation that would hurt professional athletes.

In fact, the interests of the players would be enhanced by this legislation because it would be endorsing something that is already going on—revenue sharing. And Congress would be approving policies that have permitted leagues to expand, to make more money for the leagues, and to benefit players in job opportunities, salaries and benefits available to the players and to the unions.

I repeat, Mr. Chairman, that this legislation is intended to have and will have absolutely no negative effect on players or players unions.

Mr. Chairman, the public interest requires that legislation like this be enacted both in this great body and in the House of Representatives. Also, Mr. Chairman, we want the Raiders back in Oakland. We will support them; we always have. And if Mr. Al Davis wants to come back, we are going to welcome him back, too. Thank you.

[The prepared statement of Hon. Don Edwards follows:]

PREPARED STATEMENT OF HON. DON EDWARDS

Mr. Chairman, I thank the Committee for inviting me to testify this morning. As you know, I am one of the original sponsors of H.R. 6467, which is virtually identical to Senator DeConcini's bill, S. 2784. I have carefully studied this measure and am convinced that it deserves both prompt consideration and enactment. I am also pleased to note that a majority of my colleagues on the House Judiciary Committee have joined me in sponsoring H.R. 6467.

Mr. Chairman, I want to address two specific subjects in my remarks: first, the complete inapplicability of this measure to any labor-management issue; and second, the self-evident case for applying this bill to the the Oakland Raiders' effort to abandon the East Bay.

I think it is fair to say, Mr. Chairman, that no member of Congress has worked harder to protect the rights of organized labor than I. Quite simply, I would not only refuse to sponsor, but would oppose, any legislation that would adversely affect professional athletes.

Both H.R. 6467 and S. 2784 state, in the clearest possible terms, that they have no applicability whatsoever to any player-employment or collective bargaining matter. Any argument to the contrary is based on a complete and, I suspect, deliberate misreading of the bill's provisions.

In fact, the interests of players will be enhanced by this legislation. By endorsing revenue sharing, the Congress will approve policies that have permitted leagues to expand, increasing both employment opportunities for players, and the salaries and benefits available to them. I state again, in the strongest possible terms, that this bill is intended to have, and will have, absolutely no negative effect on the interests of players or player unions.

Both H.R. 6467 and S. 2784 expressly apply to the effort of the Oakland Raiders to move to Los Angeles. I was pleased to note that Senator Specter has made it quite clear that S. 2821 is also intended to have such application. In my view, Mr. Chairman, this is both fair and consistent with previous congressional and judicial pronouncements.

I am well aware that this Committee has wrestled with the difficult question of applying a statute to pending cases. But this is not S. 995 -- rather, this bill deals with an extraordinary situation in which active congressional intervention is required.

In applying legislation to the Los Angeles decision, the Congress is not approving or lessening the penalties for criminal antitrust violations like price-fixing. Rather, it is being asked to confirm its previous statements that well-supported and financially successful clubs should not arbitrarily desert loyal fans and publicly-financed stadiums built specifically for their use. In 1966, we insisted that the NFL agree to maintain the Oakland Raiders in Oakland before endorsing the merger with the American Football League. On several other occasions, the Congress has urged leagues to maintain teams in their home territories so long as they are well supported. That is precisely what the NFL has tried to do in Oakland and Congress should confirm the propriety of that effort.

Moreover, we are faced with the unique legal situation of a Los Angeles federal court, under the antitrust laws, approving the Raidres' move, while the California Supreme Court, under the state's eminent domain law, has endorsed the City's efforts to keep the team in Oakland. Faced with these conflicting and irreconcilable rulings, Congress should act to settle everyone's rights rather than force additional years of expensive litigation and uncertainty.

Further, there is no unfairness involved in applyi this legislation to the Raiders. Upon joining the NFL, the Raiders voluntarily agreed to operate as the League's Oakland franchise and to abide by the NFL's Constitution and By-laws, including the provisions on franchise relocation. It is unjust to permit them to exploit an aberrational verdict from a Los Angeles jury in order to renege on that promise in favor of a sweetheart deal in a larger community.

This is particularly true because the Raiders have been extraordinarily successful in Oakland. They have enjoyed 12 consecutive years of sold-out home games and have generated revenues consistently near the top of the NFL. The team simply has no basis on which to justify its move except to seize on short-term profits.

Mr. Chairman, the public interest overwhelmingly favor continued operation of the Raiders' franchise in Oakland. Though they have begun playing in Los Angeles, I can state without hesitation that we want them back, we will support them, and we will forgive the insult that Al Davis has inflicted upon us.

I urge this Committee to give its endorsement to S. 2784 so that the Congress can both promptly remedy the situation in California, and ensure that it is not again repeated.

The CHAIRMAN. Thank you, Mr. Congressman.

We would be pleased to hear from you, Congressman Stark.

STATEMENT OF HON. FORTNEY H. STARK

Mr. STARK. Thank you very much, Mr. Chairman. I want to thank you and Senator Specter for the quick scheduling of these hearings. I have a prepared statement that I would ask to submit for the record, and just share a few feelings with you this morning.

The CHAIRMAN. Without objection, your entire statement will go in the record.

[The prepared statement of Hon. Fortney Stark follows:]

PREPARED STATEMENT OF HON. FORTNEY H. STARK

Mr. Chairman, Members of the Committee:

I very much appreciate the quick scheduling of this hearing on an issue of great importance to my community of Oakland, California--but also of interest to cities throughout the Nation.

H.R. 6467, sponsored by Representatives Edwards, Hyde, myself and 13[illegible] other Members of the House, is identical to the bill being sponsored by Senator DeConcini and ten other Senators.

Our bill differs from Senator Specter's in a number of ways. I note that his bill picks up some language similar to that in an earlier bill of mine, which establishes various criteria for when a team can leave a community. Frankly, I do not think these differences are very important or create an insurmountable problem. I believe that the Senator's bill and the bill we are sponsoring can be melded together to achieve the purpose we all want--protection for the fans and the communities which do so much to support and subsidize professional sports teams in the United States.

We need legislation in this area to prevent a national game of musical chairs, in which communities pursue a policy of "begger-your-neighbor" by luring teams from one stadium to another. The net effect of such musical chairs is reduced fan loyalty and increased civic costs as communities compete in offering more and more attractive stadium deals, tax holidays, and other incentives. If the Raiders are taken from us, we will undoubtedly go after some other team. That City will oppose us and if they lose, they will go with various civic goodies to make an offer someone else can't refuse. There is an enormous cost to State and local governments in all this, and it is time that we set some standards to stop this inter-city bloodletting. (If Oakland loses the Raiders, we should go after the Redskins, if they had a better win-loss ratio. That would guarantee us the passage of national legislation in less than 6 hours. But the Raiders are just as important to us as the Redskins are to Washington, and I would hope we would not wait until the Redskins are ready to move, before we pass national legislation.)

Another reason for national legislation is that these teams are incredibly important for the cities where they are located. They are a source of hundreds and even thousands of jobs--often inter-city jobs and jobs for the relatively unskilled worker. The Oakland Chamber of Commerce estimates that the team is worth $36 million in extra business to Oakland every year.

Teams are a source of civic pride and help attract other industries and investors to a city. To lose a team implies that the community is in trouble or is a deteriorating market, and this, of course, becomes a self-fulfilling prophecy.

I would like to make two other points: first I hope that any legislation which is enacted would apply to the Raiders cases. There are several arguments for applying legislation to this present case:

> -- The Raiders do not have a clear path to Los Angeles. The California Supreme Court, recognizing the substantial public interest in stable team-community relations, recently held that the City of Oakland could acquire the Raiders in eminent domain. In the face of conflicting court decisions, congressional action is particularly appropriate.
>
> -- When Congress approved the NFL-AFL merger in 1966, it insisted, both publicly and privately, that all teams, including the Oakland Raiders, would continue to operate in their home communities so long as they were well-supported.
>
> -- For 12 consecutive seasons, the Raiders sold out every game in Oakland. In 1979, when they decided to abandon Oakland, the Raiders had the third highest ticket receipts in the League and profits of nearly $1.5 million. In light of this unprecendented support, it is plainly unfair to permit the Raiders to misuse the antitrust laws to move to Los Angeles.

Second, the Players Association has been concerned that the legislation would give some new powers to the League relative to the Players. We have gone out of our way in H.R. 6467 to state--as clearly as can be stated--that our bill does not affect any labor or negotiating issue between the League, the team owners, and the players. If there is any clearer way to say this, I would be delighted to support the change, since the issue of fan and community protection should not be involved in any issues of management and labor.

H.R. 6467 is not intended to place beyond antitrust challenge decisions of sports leagues to move clubs from their assigned territories. In other words, as I understand the bill, it protects communities and their investments -- financial and civic -- in teams; and the bill does not authorize owners to desert communities even if the League approves.

The bill merely authorizes leagues to operate with rules enabling the league's membership to decide that league teams should not transfer out of the communities where they are operating. The bill does not change any legal principle operating in the other direction -- that is, it does not give leagues statutory authority to make decisions permitting teams to pick up and move from their assigned communities. Whatever the law is today regarding antitrust challenges of a league decision to move a team, those standards and principles would be unchaged by H.R. 6467. In short, the bill is directed at preventing clubs from unilaterally abandoning their assigned communities over the objection of their league's membership, but it is not an authorization for franchise hopscotching.

The fact that the bill places beyond antitrust challenge only league decisions to keep teams in their existing territories was emphasized in my sponsoring remarks when the bill was introduced, where I stated:

> "First, the bill authorizes sports leagues to operate with rules requiring their member clubs to obtain approval of the league membership before abandoning communities in which clubs have been operating successfully. This provision guarantees that the interests of communities and leagues will be evaluated when well supported and financially successful clubs are proposing to transfer their home locations. And if a league rejects such a transfer proposal, the league could not be attacked under the antitrust laws for maintaining the existing team location. This provision will, by the express terms of the proposed legislation, apply to the NFL's decision not to authorize the Raiders to transfer out of the Oakland community."

Let me emphasize, however, since questions have been raised as to the intended scope of the team location provision of H.R. 6467, I will state here for the record my intention, as a principal sponsor of that legislation, to assure that the House bill is amended before enactment to specify, as does S. 2784 that leagues are merely authorized "to enforce rules authorizing the membership of the league to decide that a member club of such league shall not be relocated."

The **Chairman.** I hope you will not duplicate too much. If you want to summarize——

Mr. **Stark.** I will try not to duplicate. I wanted first to assure Senator DeConcini that we have felt no pressure from the NFL on the House side. What he may have heard is that Congressman Edwards and I had intended to save the extra money we might have been able to get had the Senate not denied us more outside income and offer to purchase the Washington Redskins for Oakland, thereby getting Edward Bennett Williams to lobby all the Senators with season passes for this bill. [Laughter.]

That may have started most of the misunderstanding about Members of Congress getting franchises.

In a serious vein, when we have many things before us—the economy, the tax bill, and the budget—why are grownup Congressmen and responsible Senators talking about sports?

I want to focus this on Oakland.

We have with us this morning the mayor of San Francisco, and most of you would not know that the words, "There is no there there" were written by Gertrude Stein about the city of Oakland, which lives in the inferior shadow of the very glamorous city of San Francisco. But I am sure everyone in this country knows, when we mention Oakland now, that that is the home of the Raiders.

It is a poor community. It has severe unemployment; it has had autoplant closings. But the one thing that has helped Oakland rebuild since its real demise began after the Second World War has been its professional sports franchises. It has been a unifying factor between labor, and management, and between poor, and rich.

As we have gone across the country and encouraged businesses to relocate in Oakland, it has given us a spot on the map nationally. It has given our own residents some pride and some focus. And I might add that the players have been a force in our community to set an example for young people, to encourage them to stay in school and to encourage them to look at athletics as a way of creating a healthy family life.

So, I think that you have to look beyond the dollars and cents regarding what these teams mean to a community.

We have, in Congress, given all kinds of assistance and special, unique privileges to professional sports teams. The owners enjoy tax writeoffs and exemptions from certain antitrust provisions. Perhaps no other business enjoys that. The players are the only human, personal service contractors whose contracts can be depreciated. It is in the tax law. If you are a television star or a movie star, your contract cannot be depreciated, but you can depreciate the contract of a player—a very special and beneficial tax advantage that we have created.

The electronic media that is covering us today is given special privileges and exclusive contracts which make hundreds of millions of dollars. Communities are given tax exemptions for tax-exempt bonds, which all of us in this room pay for in increased income taxes.

So, we have done a little something for everyone—the communities, the owners, the players, and the media. But who buy the underarm deodorant, and the caps, and T-shirts, and the pom-poms, and the beer, and the hot dogs that make all of this possible? The one person we have neglected in the whole scheme is the fan—the fan who sticks with a team through a losing season; the fans in Oakland who bought out this year's season tickets in spite of an owner who said he was leaving town.

These are the people that we have never considered in the whole process, and that basically is what S. 2784 and the other bills deal with.

Do the owners have rights, and what ought we to do about them? I will leave that to those of you who are attorneys and are far more skilled in drafting and crafting the laws of our land to determine what ought to be the rights, if any, for fans.

But I think we have been through this time and time again. It came up in 1966 when the teams were given an exemption from antitrust. It has come up before when we were going to blackout the Super Bowl game. And if you will remember, we got legislation through both Houses and signed by the President within 24 hours, in time for the President to watch the Super Bowl on television. [Laughter.]

I am hoping that that same sense of urgency will prevail today, because there are people, particularly in my hometown of Oakland, who are as vitally concerned this fall as kickoff approaches as we were years ago when we wanted to watch the Super Bowl on television.

I urge your consideration of this. I know that there are technical differences in the law that have to be ironed out, but I hope that we can decide this fairly once and for all for all sports and for all fans across the country, because it is a very integral part of the whole social fabric of this country. It is as important as the humanities, the arts, and the economy, and I hope you will continue to consider it in the very serious nature you have. I appreciate your having these hearings to bring these problems to the attention of our colleagues. Thank you very much, Mr. Chairman.

The CHAIRMAN. You say you have got a lot of unemployment in Oakland?

Mr. STARK. We do indeed, sir.

The CHAIRMAN. Are you not going to put a strain on the fans, then, to attend unless you reduce the prices of tickets?

Mr. STARK. Well, I think, sir, that the fans are willing to pay. They may be willing to forego that extra beer or that extra hot dog to get to see the Raiders. There is a certain joy in knowing they are there, even if they have to watch them on television and cannot get out to the Oakland Coliseum to watch them.

The CHAIRMAN. Senator Specter.

Senator SPECTER. Yes, I just have one question at this stage, Mr. Chairman. I would like to direct at Congressman Edwards, who is a lawyer. Congressman Stark has indicated that he is not.

The decision by the highest court of California which says that eminent domain applies to the Raiders so that there may be a taking by the city of Oakland of the Oakland Raiders football team—and that case now has been sent back for a trial to determine if the facts would support the taking, but the California Supreme Court has said that the eminent domain principles do apply.

You are a Californian and a distinguished member of the California bar. What is there to stop, under California law, the city of Los Angeles from instituting an eminent domain proceeding itself and for the city of Los Angeles to undertake a taking of the Raiders franchise?

Could you not, under California law, have a taking by both Oakland and by Los Angeles, and if so, where does the process end, in San Jose perhaps? [Laughter.]

Mr. EDWARDS. I wish it would, and I hope it does some day, Senator Specter. However, I think that any answer I give would be very speculative. Of course, what Los Angeles should have done when the Rams left Los Angeles and went to Anaheim for more money was file an eminent domain at that time.

I would think, just as a guess, that it would be too early for the Los Angeles City to file an action of eminent domain because I do not think that their title has been established as yet, with all of the great controversy that is taking place as to whether or not the move is legal or not.

Senator SPECTER. Why would that be so, Congressman Edwards? There has not been a stay granted as to the ruling of the Federal court in Los Angeles. As things stand now, is it not true that the season will start with the Raiders playing in Los Angeles as the Los Angeles Raiders?

Mr. EDWARDS. Yes; but it will not be for several weeks because I believe that the Raiders are on the road.

Senator SPECTER. But at the time they become the Los Angeles Raiders, are they not subject to being taken by eminent domain, just as they were in Oakland?

Mr. EDWARDS. Yes. I hope Los Angeles does not get the idea. [Laughter.]

Senator SPECTER. There is some slight chance that they may have heard about these proceedings. [Laughter.]

Thank you, Mr. Chairman.

The CHAIRMAN. Let us get quiet.

The Senator from Alabama.

Senator HEFLIN. It is my understanding from Mayor Wilson of Oakland that the city and the county are left with over $1.5 million in their annual debt service cost in regard to the stadium that was built there.

Can you give us some information about the effect that it will have on the city and the county by moving the Oakland Raiders?

Mr. STARK. Well, Senator, Mayor Wilson is quite right. In addition to the loss of perhaps 3,000 to 5,000 jobs, a financial burden would be placed on the Coliseum Commission, supported by community taxes. And while it is difficult to determine what the total loss may be, we operate in California under a provision which prohibits us from increasing real estate taxes, which would be the principal source of revenue from which any payment on the indebted obligation of the coliseum could be redeemed.

We would be between a rock and a hard spot, quite frankly, to see where the money would come from. Obviously, defaulting on an obligation to pay off debt on a coliseum could be catastrophic for a community that depends on municipal financing for its very existence.

So, the burden of losing the considerable rent from a sports franchise, when a community had, I think, every right to expect that that would continue for some years, would be great.

Senator HEFLIN. That is all.

The CHAIRMAN. The Senator from Arizona.

Senator DECONCINI. I have no questions. Thank you.

The CHAIRMAN. Thank you, gentlemen, very much for your appearance.

Mr. STARK. Thank you.

The CHAIRMAN. Mr. Pete Rozelle; if you will come around, Mr. Rozelle. Since this is a rather delicate matter, I think we might as well swear the witnesses. Will you stand up and be sworn.

Will the testimony you give in this hearing be the truth, the whole truth and nothing but the truth, so help you God?

Mr. ROZELLE. Yes, sir.

The CHAIRMAN. Mr. Rozelle, we are pleased to have you with us and you may proceed now with your testimony.

STATEMENT OF PETE ROZELLE, COMMISSIONER, NATIONAL FOOTBALL LEAGUE, ACCOMPANIED BY PAUL TAGLIABUE, COUNSEL

INTRODUCTION

Mr. ROZELLE. Mr. Chairman and members of the committee, I deeply appreciate opportunity to testify before you today, particularly recognizing the urgency of other matters before the Congress.

We are gratified that you are now considering legislation to protect the public interest in team-franchise stability. The committee has before it two bills—S. 2784, the Major League Sports Community Protection Act, and S. 2821, the Professional Football Stabilization Act.

For the reasons I will explain shortly, the National Football League strongly favors the approach of S. 2784. I have submitted a detailed statement for the record, and at this time I would like to simply and briefly, in the interests of time, summarize that statement if I may, Mr. Chairman.

The CHAIRMAN. Without objection, your entire statement will go in the record and you may now summarize it.

SUMMARY OF S. 2784

Mr. ROZELLE. S. 2784 serves two specific purposes. First, it bars an antitrust challenge when a sports league determines that a member club should remain in its home area. It says that the antitrust laws are not violated when a league requires a member club to continue serving its existing fans, community, and taxpayers.

S. 2784 does not authorize leagues to relocate teams or to walk out on taxpayer-built stadiums. It is, in short, a community protection bill, and it directly protects consumers and taxpayers in league communities.

Second, S. 2784 would confirm the right of sports leagues to share revenues in a manner that tends to reduce financial disparities among the clubs. This provision will enable the NFL to continue policies that have allowed us to establish professional football in small- and mid-sized communities across the country.

Revenue sharing has enabled the league to grow from 12 to 28 teams since 1960, the year I became commissioner, and is the key to maintaining geographic and competitive balance in professional football. It is an essential part of any sports antitrust bill, and we fully support its inclusion in S. 2784.

I stress the precise and narrow limits of this bill, Mr. Chairman, because so much of the criticism of it has been misguided or intentionally misleading. This bill is not antiplayer, it is not antiunion, and it provides no incentive for us to shift from free network to pay television.

PROTECTING THE OAKLAND CONSUMERS

Mr. Chairman, in my remaining time I want to briefly make five important points. First, I want to comment on the NFL decision to try to keep the Oakland Raiders in Oakland. Put simply, we are charged with an antitrust violation because we tried to stop an NFL member club from gouging the consumers and taxpayers of the Oakland area—a community that had built and financed a stadium for the Raiders, and supported the team in extraordinary fashion.

When the Raiders decided to move to Los Angeles, they had the third highest ticket revenue in the National Football League. They had the fifth highest revenue from all sources of the 28 teams in the National Football League, and had profits in the two preceding seasons averaging over $1.5 million.

They had sold out every game—even the preseason games—at home for 12 straight seasons, and their publicly financed stadium had annual debt service costs of $1.5 million through the year 2006.

If I had appeared before this committee 4 or 5 years ago and asked whether the NFL should allow the Raiders, of any other team, to move under these circumstances, I know what your answer would have been.

The Washington Redskins' revenues, as an example, did not match the Raiders', and if we had proposed to authorize a Redskins move, the reaction would have been one of outrage in this community.

In the Raiders instance, the league's membership voted, with no club dissenting, that the Raiders had not made a case for leaving Oakland and should remain there. We voted, in other words, that the Raiders should continue to have sellout crowds in Oakland, that they should continue to serve the Oakland consumers, that they should continue to have high revenues, and that they should continue to generate income for the Oakland Coliseum to pay off the stadium indebtedness.

Where are the consumers and fans of Oakland in this effort? They are also challenging the Raiders' conduct. They have spent many hundreds of thousands of dollars in doing so. They are standing with the NFL and urging us to continue fighting to keep the Raiders in Oakland. Both the season ticketholders and the city, in its eminent domain action, are seeking to keep the team in Oakland.

So, I ask, should it be a violation of antitrust laws for a sports league to prevent a member club from gouging consumers and taxpayers? Clearly, I think not.

CONGRESS SUPPORTS TEAM STABILITY

Let me turn now to a second point—congressional policy on matters of team location. Since I became commissioner 23 years ago, congressional committees have repeatedly told the league that well-supported teams should not be permitted to relocate. We were repeatedly encouraged to maintain geographic balance and to keep teams in communities of all sizes throughout the Nation.

We were told that revenue sharing was a wise policy, since it assured that communities such as Green Bay, the Minnesota Twin Cities area, and Pittsburgh could continue to enjoy NFL football.

In 1966, when Congress considered the proposal to consolidate the NFL and the American Football League, it was stressed that the merged league should retain well-supported clubs in their existing communities. In response to those congressional concerns, we made private and public commitments that no franchise, in particular the Oakland Raiders, would be moved so long as it remained well supported in its own community.

Further, when the Raiders agreed to become an NFL member club in 1966, they voluntarily signed the merger agreement that contractually committed them to remain as the NFL's Oakland team unless and until the league determined otherwise.

Now we are told—unfairly, unreasonably, and in a partisan forum—that our decision in 1980 to act on these strong expressions of congressional policy and to protect consumers of the NFL product in Oakland is a violation of the antitrust laws.

NFL POLICY ON TEAM STABILITY

My third basic point relates to NFL policy on team-community ties. It has been firm and consistent with Congress urgings. Since 1960, 25 NFL clubs have begun play in new or improved stadiums, nearly all built or improved at least in part with public funding; 19 of those teams moved in a literal sense from one stadium to another during this period, including several to suburban locations in the same home area.

But not one NFL club was permitted to abandon its home territory, to walk away from its fans, or to ignore major, unpaid public investments in a stadium built for professional football—that is, until the Raiders secretly negotiated a lucrative deal in their rush to Los Angeles.

THE UNFAIRNESS OF THE RAIDERS DECISION

My fourth point will underscore, I think, how arbitrary and unprecedented is the jury's verdict in Los Angeles. Antitrust law prior to the Los Angeles trial was clearly supportive of the NFL's position.

Before the Raiders tried to abandon Oakland, the leading antitrust decision, in the very district where the Raiders and Los Angeles authorities later sued the NFL, held that the National Hockey

League had the right to decide that one of its teams should not relocate outside the San Francisco-Oakland Bay area where it was then located. In 1976, the Department of Justice had stated to the House Select Committee on Sports that team-transfer issues probably did not even present an issue under the antitrust laws—a view confirmed by leading academic commentators. The Los Angeles verdict, in short, is a total reversal of prior antitrust learning.

The Oakland-Los Angeles situation is arbitrary and capricious in another respect as well. The league found itself damned in antitrust whichever way it went. Had the clubs permitted the Raiders to leave Oakland, they would have been sued by Oakland interests on the ground that the league was establishing the San Francisco 49'ers as a local monopoly in the Bay area. When the league opposed the Raider move, the league was sued in Los Angeles for supposedly seeking to preserve a Los Angeles Rams monopoly in the Los Angeles area. Antitrust theories that create bitter litigation irrespective of the league's decision make no sense and they serve no public or fan interest.

S. 2784 HAS NO LABOR RELATIONS EFFECT

I will conclude with a final subject. This legislation has no negative effect whatsoever on player union or collective bargaining matters. S. 2784 explicitly provides that it has no application to any employment or labor-management matter in professional sports.

For months, we have emphasized that we seek no legislation on any player employment subjects. And, Mr. Chairman, I advised you and Chairman Rodino by letter in March that the league would oppose any legislation that could negatively affect the players.

No player interests are undermined by the bill's endorsement of the league's revenue sharing practices. As Senator DeConcini stated when he introduced S. 2784, and I quote:

> The provision of the bill dealing with revenue sharing among the members of a league does not change any antitrust or labor law principle relative to wage scales or wage agreements. Any collective bargaining that might now occur, for example, on an allocation of revenues to player benefits would clearly continue to be permissible under this bill.

Perhaps the strongest confirmation of the labor-management neutrality of this legislation is its broad cosponsorship in the House and Senate. Representatives Stark and Edwards, who appeared here this morning in support of the legislation and were among its original cosponsors in the House, have long been sensitive to the concerns of organized labor and professional athletes. The city of Oakland and the NFL have worked with them and other Members of Congress to assure that this legislation has no possible negative impact on player-employment matters.

Again, Mr. Chairman, I appreciate the opportunity to speak to you this morning on this extremely important measure. I am grateful for the committee's consideration of these issues, and I would be very pleased to answer any questions that you might have.

The **Chairman**. Thank you. Mr. Rozelle, in order to bring out the facts here, the different Senators may play the devil's advocate. So, do not feel that any question that we ask is taking any sides. I know, personally, I am openminded on this question and I feel sure the other Senators will be too, although they have introduced some bills. Sometimes, Senators change their minds due to hearings, and that is what they should do when they hear the testimony.

Now, I have a few questions I would like to propound to you. Mr. Rozelle, before we discuss franchise movement, I have one question regarding the revenue-sharing provision of S. 2784.

It seems to me that before the Congress decides whether to authorize such sharing, it should have a firm grasp of what revenue is being shared. On behalf of the league, would you agree to submit financial information in such detail as the committee deems necessary to properly analyze the effect of this provision?

Mr. ROZELLE. First, I believe that we have submitted certain financial information to the committee that was quite, quite complete. If additional information beyond that is required, we will work with you to provide it, hopefully, on a confidential basis.

The CHAIRMAN. Thank you.

Mr. Rozelle, I also wonder if the NFL would submit to the committee a copy of the league's current rules, constitution, bylaws, and other organizational documents.

Mr. ROZELLE. Certainly, sir.

The CHAIRMAN. Mr. Rozelle, in its recent brief to the Ninth Circuit in support of a stay, the NFL makes reference to the decision of the city of Oakland to acquire the Raiders by condemnation proceedings. It is my understanding, however, that current NFL rules would prohibit the city of Oakland from owning the team.

If this is true, do you know of any plans the city may have made to condemn the team and shortly thereafter sell it to someone who would agree not to relocate?

Mr. ROZELLE. Yes, I believe that would be their intention. NFL rules provide that the city of Oakland could not own the club. It would be a transitory arrangement similar in the past to a club bankruptcy we had where the franchise temporarily was in the hands of a judge and where we had bank executors in control of an estate.

It would be Oakland's intention, as I understand it, to comply with the NFL rules by simply acquiring it on a transitory basis and then selling it to an owner in the community who would intend to keep the club in Oakland.

The CHAIRMAN. Mr. Rozelle, I also note that in your ninth circuit brief, you state that trial testimony indicates that the NFL considers Los Angeles a promising site for future expansion. It seems to me that given the success of the Raiders over the last decade, Oakland would be at least as attractive a city for a new franchise as Los Angeles.

Do you agree, and if so, why not let the Raiders go to Los Angeles and put a new team in Oakland?

Mr. ROZELLE. Well, to answer your last question, I think that after a 22-year romance with a football team, the community of Oakland—and we will hear from them on the subject—wants the Oakland Raiders. That is the established team that has been one of the two most successful teams since 1966.

They do not want to start from scratch with an expansion club and build. They want the Oakland Raiders, and they feel that the

Raiders made commitments to stay in Oakland as long as they were well supported.

The CHAIRMAN. Is there a contract that they entered into to stay?

Mr. ROZELLE. No. Their lease agreement was up. The oral contract, if you will call it that, was made by the then commissioner of the American Football League, Joe Foss, who, in the early 1960's, made a number of trips to Oakland. And he told the people of Oakland, "If you build a stadium for the Raiders"—they were then playing on a very small field in a small stadium—If you build a stadium for the Raiders, we will assure you that they will remain as long as they are well supported."

The CHAIRMAN. Now, when was that statement made?

Mr. ROZELLE. It was made on many occasions, as I recall, around the period of 1962, 1963.

The CHAIRMAN. It was not in writing, but an oral statement that he made to the officials?

Mr. ROZELLE. No, sir. It was a pledge made by the commissioner. It was not a written guarantee.

The CHAIRMAN. Now, for what length of time did he make that pledge—1 year, 10 years, or what length of time?

Mr. ROZELLE. He said the club would remain there as long as it was well supported. It was a moral commitment he made on behalf of the league: "If you will spend the money to build this stadium, we will assure you that we will have a team here as long as it is well supported."

The CHAIRMAN. In Mr. Robertson's prepared remarks, he includes a chart which shows that the average length of current stadium leases in the National Football League is 22 years. One lease is 40 years and several are 30 or more.

Given this statistic, how likely is it that, absent legislation, there will be a massive shifting of franchises all across the country as a result of the Oakland court decision?

Mr. ROZELLE. There will be, I think, seven franchises whose leases expire within the next 6 years.

The CHAIRMAN. I am somewhat confused about the force and effect of league commitments to various cities concerning their expectations of holding on to a franchise. For instance, your written testimony refers to the fact that the league recently guaranteed Minneapolis a team for 35 years in exchange for building the Metrodome.

Was this done by written contracts or a representation or some other method, and how do you expect such a guarantee could be enforced?

Mr. ROZELLE. The guarantee was made, I believe, in 1979, and I believe it was a guarantee that was made in writing to the Minnesota State Legislature when they were considering a stadium. It was also made at a time that we did not feel we had a question concerning revenue sharing, and we felt confident then when we made it that the league could see that a team would be there for 35 years.

The CHAIRMAN. Could we get a copy of the written agreement you referred to?

Mr. **Rozelle**. Yes, sir. We will give you a copy of all of our correspondence with the Minnesota State Legislature.

The **Chairman**. Mr. Rozelle, I understand that the ruling of the district court in the *Oakland* case was relatively narrow. Rule 4.3, in its current form, was considered unlawful under a rule of reason analysis.

In response to this verdict, has the league considered amending rule 4.3 to include reasonable economic and other types of criteria which must be considered when making a relocation decision?

Mr. **Rozelle**. We were given no basic guidelines, but insofar as specific criteria are concerned, we feel the league does consider all criteria. As an example, we consider what bonded indebtedness the taxpayers would have. In the case of Oakland, as I said, it would be the year 2006 on the stadium.

We would consider how well they had done. They had sold out for 12 straight years. We would consider what the relationship was between the club and the stadium. The unfortunate part of the relationship between the city of Oakland and the Oakland Raiders is that the Oakland Raiders wanted improvements made on the stadium that would have cost 20 or 25 years of amortization, whereas they were only agreeable to signing a 7-year lease, and that was their problem. They would not sign a long enough lease to enable the city of Oakland to give them the improvements they were requesting.

The **Chairman**. More specifically, I note that in an affidavit you prepared in 1978 for the Oakland litigation, you listed such relocation factors as travel costs, stadium appeal, effects on gate receipts, and the impact on television scheduling and ratings.

Why not draft a more specific relocation rule and subject it to the rule of reason? Why could you just not put this in rule 4.3?

Mr. **Rozelle**. In the first place, the affidavit was filed in 1978 and did not relate to team relocation. That was a period at which the Los Angeles Coliseum was seeking to get an NFL expansion franchise. Inasmuch as we had just expanded 2 years before in 1976, we did not feel it was feasible.

But that affidavit listed some of the factors that we take into consideration when we expand. We feel that if we were to put specific guidelines in as to a transfer of a present club—as an example, how they have done financially—that can be juggled. A team can arrange its figures in a way to show losses for several straight years.

On another factor of whether it was an adequate stadium, they could refuse to sign a long-term lease, as the Raiders did, and yet expect much more in the way of improvements than a community could pay with the amortization period.

And I think that if we try and establish specific guidelines for relocation, we just run into more litigation concerning the relocation, and again we have a can of worms.

The **Chairman**. Mr. Rozelle, in your written testimony you make several references to prior congressional policy statements emphasizing the importance of stable team-community ties. Could you give us some specific examples of such policy statements?

Mr. **Rozelle**. On the part of Congress, we have references in the Congressional Record of 1966 on the merger bill showing that Congress applauded this pledge that we made on the basis of private conversations with the Congressmen and Senators. They lauded the fact that we were going to keep all of our franchises in the same areas.

In the case of the league's actions, I have always been a proponent of teams staying in their present locations as long as they are well supported. In the early 1970's, the then-owner of the Baltimore Colts wanted to move the team to Miami. I felt it could not be justified and I informally told him, "We can take this before the league, but you have had a sufficient number of sellouts; I do not think a case can be made for leaving the Baltimore fans." They did not move.

In more recent years, while the request was not made, again an owner of the Baltimore Colts has considered moving. And pending his future financial circumstances in the league, we felt that it was not justified.

In the case of Buffalo, there was talk that they would move at one time. We worked with the Buffalo community, and the Buffalo team committed to, I think, 25 years on the basis of a new stadium.

I explained earlier what we did with Minnesota, where there was talk that that team might leave. And to enforce the lease of the Minnesota Vikings, we committed—the league committed that there would be a team and ownership there for 35 years.

The CHAIRMAN. Mr. Rozelle, you were quoted in last Thursday's Los Angeles Times as saying that unless Congress gave the NFL antitrust immunity to stop franchise relocation, the league would not grant any new franchises. Were you quoted correctly?

Mr. ROZELLE. I was quoted correctly, and I would like to explain briefly, if I may. What I said was that the league cannot consider expansion in this uncertain climate, the climate being where we pick a city, which is how we expand. We would have no assurance that the team would stay in that city with this ruling of the antitrust court in Los Angeles. They could just move. Leases could be bought up; leases can be breached, or supposedly breached. We would not have assurance that the team would stay there.

When we picked Tampa Bay and Seattle, our last two expansion sites, we picked them before we picked the owners. The league decided that, "This is where we want expansion teams. We think they will do well there." The league, fortunately enough, was right. Those two expansion teams have been very successful.

The other aspect why we could not consider expansion, in my judgment, is if the revenue sharing is being challenged--and it was in the courtroom in Los Angeles—if someone could challenge the revenue sharing, I see no way we could bring a new team in the league and tell them, "No, you are not going to get $11.8 million a year like everyone else. This could be challenged and you could get nothing in sharing television, except what you could get from your local market." I do not see how we could expand on that.

Another aspect of expansion: If we expanded by two teams in 1984—and I say this just to show that it is not a moneymaking deal in football—if we expanded in 1984 by two teams, they would operate for the last 3 years of the television contract that we now have—1984, 1985 and 1986.

The existing 28 clubs, by bringing in two new partners, would be diluted to a total extent of $87 million over just those 3 years. Now, that $87 million would be less the amount that they could get for the sale of a franchise from new owners.

As you can see, it is not a moneymaking proposition, but it has worked well for the league in being national in scope and being strong for television and other purposes.

The CHAIRMAN. Mr. Rozelle, one of the most controversial features of S. 2784 will probably be its application to pending cases. It appears to me that, as written, S. 2784 would automatically reverse the Raiders decision.

When this committee recently considered applying the antitrust contribution bill, S. 995, to pending cases, it agreed to leave that decision up to the trial court to do equity in each individual case. Would you support a similar approach in this legislation?

Mr. ROZELLE. We would not. We feel that, first, considering the retroactive phase, which, as you suggest, Mr. Chairman, this does cover—the Oakland situation—I came to Congress earlier this session in November or December at House hearings. We explained this situation at that time in Oakland. We were told, "Come back when you have a problem; come back when you have a problem."

We are back; we do have a problem. What has happened since that time is that we have an antitrust suit by the Oakland Raiders which they won in a Los Angeles court. That is on an appeal before the ninth circuit and it will be heard this spring.

We have the city of Oakland with a successful eminent domain decision from the California Supreme Court. That will go to trial near the end of this present year. We have a situation where the Raiders are going to play this year, apparently, in Los Angeles.

So, we were told to come back when we had a problem. We feel we have a big problem, and we are hopeful that the Congress will recognize it and clarify it.

Pardon me. The other reason that we support the retroactive phase is that right from the start, we were defending together with Oakland. They went with us right down the line at a community cost of hundreds of thousands of dollars in defending this suit in Los Angeles through two lengthy trials—one 3 months, one almost 2 months.

We feel we originally supported them, and with the support they have given since, we cannot bail out on them. We feel that we are interlocked with them and that they are deserving of our support. And that is the reason, Mr. Chairman, that we feel it should be retroactive.

The CHAIRMAN. Mr. Rozelle, I believe you have revenue sharing. Is it 97 percent that is shared?

Mr. ROZELLE. In some form or another, including equal sharing of television, about 97 percent of our income is shared.

The CHAIRMAN. Ninety-seven percent of all the income of all the teams is shared?

Mr. ROZELLE. Yes, sir. The gate receipts are shared, 60 percent for the home team, 40 percent for the visitor. The television and the marketing income is all shared equally.

The CHAIRMAN. I was just wondering what difference it makes, then, which team lives where or plays where.

Mr. **Rozelle**. Well, if we do not have revenue sharing, which was suggested in the Los Angeles court—it was suggested that we did not have antitrust immunity and perhaps an individual club could challenge it and, on its own, go on pay television.

This year, the clubs in the National League will each get $11,800,000. If you take $11,800,000 away from Green Bay—and you will hear from the mayor later—I cannot imagine that they could survive, as against the money to be made in the major markets.

The **Chairman**. Well, if you do have revenue sharing and they share 97 percent, what difference does it make?

Mr. **Rozelle**. Well, about 60 percent of that income would not be shared, as was suggested in the Los Angeles court. If a team decided to sue the league on the basis that we are economic competitors, they would sue the league and say, "I want to go on pay television. Why should I not be enabled to go on television in the big city that I live in rather than share equally with all these other entrepreneurs I am competing with?"

We say that we are a partnership off the field. We work together from a business standpoint. On the field, of course, they fight like hell. They try to win. But we say we are, more or less, a joint venture off the field. Now, if you are going to eliminate that joint venture and you are going to take away $11,800,000 from some of the weaker clubs, there is no way they will stay in existence.

The **Chairman**. Assuming that revenue sharing is legal, then what difference would it make?

Mr. **Rozelle**. Because it looks like we have a chance of having to support that contention in court. It was said in the Los Angeles case that it was questionable whether we had the right to share cable television income or whatever might come in the future equally.

The **Chairman**. Well, that is not the question I asked you. I said, assuming it is legal, then what difference would it make?

Mr. **Rozelle**. If it is legal, I guess all we would have to do is defend it and win it in court. If we went to court on it, were challenged, and the court ruled the same way they did on the case in Los Angeles, they would rule against us. But if we won in court, it would be declared legal.

The **Chairman**. Well, if revenue sharing is legal, what difference does it make which team plays where or lives where?

Mr. **Rozelle**. Well, I think you will hear from some of the mayors this morning, but it makes a heck of a lot of difference where a team plays. The people in the community—it is more than just economics, which you have been given figures on. It is a strong psychological feeling. I think here in Washington, the people——

The **Chairman**. I am speaking from the standpoint of revenue. What difference would it make? If it is legal and 97 percent of it is shared, what difference would it make to the NFL?

Mr. **Rozelle**. If it is legal, we have no concern. But I am saying that in many people's minds, it is not legal now, and we can be challenged on it in court.

The **Chairman**. Well, if revenue sharing is legal, then it would be all right for the Raiders to play in Los Angeles.

Mr. **Rozelle**. No, because then we have the league's opinion, in determining relocation of franchises, that Oakland did not make a case for moving. They had the fifth highest revenue of the 28 teams in the National Football League, and the third highest——

The CHAIRMAN. Maybe they wanted the highest. [Laughter.]

Mr. ROZELLE. Well, they apparently did; they apparently did. But they were well supported in Oakland. We feel that goodwill, loyalty, a city putting up a stadium—we think that means something in the National Football League.

Now, if we are going to have a situation where, when some or all of these six or seven clubs whose leases are up during the next 6 years—if their lease is up and this bill does not pass—and we have a state of law that a club can go wherever it wants to if its lease is up, or if not you buy it up, you are going to have an auction of a franchise. I assure you that you will have auctioning of franchises.

You will have an owner going to a city and saying, "Come in Governors, come in mayors; who wants my club? What will you offer in the way of inducements for my club to move from where it is to another city?" We do not think that is in the interests of sports, the fans or the public.

The CHAIRMAN. The Raiders are now in Los Angeles?

Mr. ROZELLE. They have not played there, but they are not stayed by a court at this time from playing there. And they are planning to play there at least this year.

The CHAIRMAN. Well, now, if they are forced to go back to Oakland, then what team will be in Los Angeles?

Mr. ROZELLE. Los Angeles has a team. They have the Los Angeles Rams that moved to the suburbs of Anaheim, about 28 to 30 miles away. Eighty percent of the Rams fans, when they made that move from the city to Anaheim, renewed their tickets. The Los Angeles Times did a survey in about 1978 when the Rams were talking about moving, and while 80 percent of the fans interviewed were from Los Angeles, the most said they would welcome a move to this newer facility in Anaheim.

The CHAIRMAN. Well, do the Raiders feel they can make a success of it in being right in Los Angeles, since there is no team right there?

Mr. ROZELLE. They obviously do. The Rams, incidentally, have the same television pattern that they had when they played in the Los Angeles Coliseum. All of their games are televised.

The CHAIRMAN. Los Angeles is such a big place, you know; that is one of the biggest cities now in the United States.

Mr. ROZELLE. Yes, sir, it is.

The CHAIRMAN. You do not think they can support two teams 30 miles apart?

Mr. ROZELLE. Certainly they could. I think New York, Chicago, Philadelphia and——

The CHAIRMAN. Well, what is going to happen then if the Raiders go back to Oakland? Do you plan to put another team in Los Angeles?

Mr. ROZELLE. Los Angeles will be considered, along with the other cities interested in expansion, when we do expand. We would appoint an expansion committee. They would gather information on every city interested, and the member clubs would vote.

The CHAIRMAN. Well, since the Raiders have already moved to Los Angeles, why do you not just put another team in Oakland?

Mr. ROZELLE. The main reason being that Oakland does not want to start off from scratch with an expansion team. They did that in 1960. They built a team that has been a Super Bowl team and the second most successful team since 1966 in the league.

It would be like my saying the Washington Redskins are moving to Memphis, but we are going to give you a team in Washington, Redskins fans, that will be a fine team. It may take you 6 or 7 years or 5 years to develop because we are going to give you minor players from each of our existing teams to stock it. You will have a situation in Washington where it might be like Tampa was. Tampa lost 26 straight games when they started out.

Oakland does not want to do that. I do not think, with the heritage of the Redskins in Washington, that Washington would want to do that. They want their established team.

The CHAIRMAN. Well, from the standpoint of the NFL, if 97 percent of the revenue is shared, what difference does it make to the NFL?

Mr. ROZELLE. Because we question whether revenue sharing on television will be accepted in the future.

The CHAIRMAN. Well, suppose it is accepted.

Mr. ROZELLE. In court?

The CHAIRMAN. Yes, suppose it is accepted.

Mr. ROZELLE. If we win the court case on it, that would be fine.

The CHAIRMAN. Suppose revenue sharing is approved; what difference does it make to the NFL?

Mr. ROZELLE. Cities would not build stadiums, for one thing. They would feel that the clubs could just move out whenever they wanted to.

The CHAIRMAN. Well, you do not think that Oakland would accept another team there? They have got to have this particular team back there?

Mr. ROZELLE. Again, I use the example of Washington. Imagine if you brought a team into Washington now, with the long tradition of the Redskins—and Washington did not make as much money as Raiders when they played in Oakland—if you brought a team into Washington and said, "We have got these three players from the Eagles and these three from other clubs, and we are going to stock you with lesser players from each of the teams," and if the new Washington Redskins had to start with 26 straight losses. Believe me there is a big difference between an established team that the fans have grown to accept and know the players on and an expansion team starting from scratch.

The CHAIRMAN. Well, thank you very much, Mr. Rozelle. We are glad to have you here. I have got to go and open the Senate now. I am going to turn the hearing over to Senator Specter, if he will come over and take charge.

[Whereupon, Senator Specter assumed the chair.]

Senator SPECTER. Commissioner Rozelle, in your description about recognizing the fans' interest and the NFL's approach to have a team stay in an area as long as they are well supported, and in line with the expressions we have heard today about consideration from the fans, was there any violation of the fans' interests when the Giants were moved to the Meadowlands or when the Patriots were moved as they were, or the Lions?

Mr. ROZELLE. I think I explained that in the last 22 years, some 19 teams have moved to new or enlarged stadiums. The great majority of those were in the city limits of the city which they represented.

There were a number of them—five or six—that did move to the suburbs because a more attractive stadium could be built at less land cost. Buffalo plays in Orchard Park, a suburb of Buffalo; I guess it is a matter of 6 or 7 miles. Dallas plays in Irving, Tex. They built their own stadium there; again, it is in the suburbs of Dallas. New England started out in Boston and they moved to Foxboro because they will get a new stadium there. New York moved across the river to Jersey, where the Giants are now playing in the Meadowlands.

Senator SPECTER. What was the longest move of any of those which have been made?

Mr. ROZELLE. It would be Pontiac, where we had our Super Bowl game last year. The Silverdome was built there, about 28 or 30 miles from downtown Detroit. And the comparable one would be Los Angeles, which moved to the Big A Stadium in Anaheim; that would be about 28 or 30 miles from Los Angeles.

And for some of them, it was a closer drive for the season ticket holders; for some, a further drive.

Senator SPECTER. You testified that some 80 percent of the Rams fans retained their season tickets?

Mr. ROZELLE. Yes.

Senator SPECTER. What were the comparable statistics on the other moves, if you know?

Mr. ROZELLE. Incidentally, that was consistent with the Rams' annual renewal; they would annually renew about 80 percent.

I do not have figures on the others, but I know that it was very, very high, and in the case of all of them I would be sure that it would be between 80 and 90 percent, although I do not have specific figures for you.

Senator SPECTER. Is there some suggestion in the move by the Raiders to Los Angeles that there is anticipated a challenge on pay television to get a larger share of the revenues?

Mr. ROZELLE. Yes. It was implicit in the court case itself. There was a great deal of memoranda and other information developed showing that there had been discussions concerning pay television by the Raiders with interests in Los Angeles.

Then it was said that the Raiders questioned whether this type of income could be shared equally unless the league got congressional immunity for it. Well, our concern in the league now is that if Oakland moves to Los Angeles, or some other club owner, they could make the contention that just as they had the right to move to Los Angeles, they have the right as individual entrepreneurs to extend their income; they should not be bound by the league package.

And they could go pay television, they said, unless we got congressional action, and keep all the money.

Senator SPECTER. Is there any current plan or inclination on the part of the NFL to move to pay television?

Mr. ROZELLE. We just signed a 5-year contract——

Senator SPECTER. How about beyond the 5 years?

Mr. Rozelle [continuing]. 1982 through 1986, with assurance that there would be no cable or pay television. During this 5 years, the National Football League will be the only league not on a limited viewing through cable or pay television such as the other sports now have. We committed for 5 years.

We would plan after the 5 years, depending upon the technology available, to basically, I believe, stay on free television, with some deviation for cable or pay or whatever is developed in the technology. We just have no commitment, no thoughts; it just depends on what comes up in the future.

But we do know that we will have to be in the public interest, and if we tried to go off free television completely and just go to pay or cable, there would be serious concern among the fans and with Congress.

Senator Specter. There is quite a concern among the fans about the possibility of pay television. And as you note, the NFL would be free to undertake pay television at the end of the 5-year contract that you have just described.

Would the league be willing to make any sort of a commitment as to a time span during which you would not go to pay television?

Mr. Rozelle. I do not know what the future holds. We would have to consider it. But I think that when we committed to 5 years, when many people thought that we would be going into cable during this 5 years, it certainly gives our intent. We do not know what it will be 5 years from now.

All the other sports have some of their product on cable today. We are the only one that when we go on, all of the public can see it; it is not limited to cable viewers. And I have not thought about beyond 1986 because that is a long time, but I would think that we will be very concerned about the views of Congress at that time, as we have always been, when we deliberate and decide what our policy will be.

Senator Specter. Commissioner, are you asking the Congress to extend the antitrust immunity granted in 1961 for joint agreements of rights in sponsored telecasts to cable and pay TV and all other forms of telecommunications?

Mr. Rozelle. We are absolutely not. We go with that 1961 act—we want no extension of that, no improvement of that. This legislation that we are seeking now has no bearing on 1961. We accept that statute and do not want it improved.

Senator Specter. Well, under the terms of the 1961 statute, it would appear that you have immunity from an antitrust charge for any form of sponsored telecasting.

Mr. Rozelle. But the question in Los Angeles was the right of an individual club—as an example, the Raiders—to go on pay television. It is called On TV in Los Angeles. And if they were dropped out of the league package, say, through litigation, and they had the right to do this, then they would sell all of their games.

Senator Specter. But they have made an agreement to share in the pooling arrangement on telecasts with the league, have they not?

Mr. Rozelle. They made an agreement in 1966, in writing, to keep the club in Oakland as long as it was well supported. They signed that agreement at the time of the merger with their partners in the National Football League. Now they are saying that all the rules of the NFL and all agreements of the NFL can be challenged, and they did challenge one—relocation of franchises.

Senator SPECTER. Commissioner, I understand your point on that. But the question I just asked went to the issue of their agreement on sponsored telecasting. The act of 1961 looks to me to be pretty absolute on its face. It provides that the antitrust laws shall not apply to any joint agreement among football teams or other transaction or any part of the rights of such league's member clubs in sponsored telecasting.

Now, that may be an unduly complex legal issue. You have your counsel with you. But on its face, it would appear that the 1961 statute gives you a specific exemption from antitrust application, so that the Oakland Raiders would not have any basis for saying that the agreement to share in television revenues was a violation of the antitrust laws.

Mr. ROZELLE. In effect, in the court case in Los Angeles, as I recall, they testified that they would have a right as a team to go on pay or cable television in Los Angeles, and they would not be required, unless there is congressional immunity given to it, to share that money with the other clubs in the league.

Senator SPECTER. But how could they do that in the face of, No. 1, their agreement, and, No. 2, this statute which makes such an agreement exempt from antitrust violation?

Mr. ROZELLE. I do not think it makes cable, perhaps—cable or pay television—I do not believe it touches on that. And beyond that, they have challenged one rule; they could easily challenge another.

Senator SPECTER. Well, wait a minute. It says sponsored telecasting. So, is it your conclusion that it does not cover pay or cable, because if so then do you not need an exemption for pay and cable if your pooling is going to stand up?

Mr. ROZELLE. I think that perhaps as a legal decision and interpretation of that statute, if you would not mind, I would like to ask Mr. Tagliabue to comment on it.

Senator SPECTER. You have a right to consult with counsel.

Mr. ROZELLE. Thank you.

Mr. TAGLIABUE. Senator Specter, you are getting into some pretty complicated questions here.

Senator SPECTER. Let us hope so. [Laughter.]

Mr. TAGLIABUE. On the 1961 statute, it does not specifically say that you can share the revenues that you generate when you sell to the networks. Now, the legislative history is very clear on that, but the statute itself is not. The statute applies to the sale agreement with the network, not to the agreement among the clubs to dispose of their revenue.

Second, we have already had litigants in court telling us that under the 1961 statute—and this is not the Raiders; this is other litigants—we can sell to the networks, but we could not agree with the networks to refuse to sell to cable or pay; that we have a dual obligation. We have got to sell to all places.

And the Raiders have demonstrated that they will take that kind of a position on this issue and on other issues, I think. And a final point——

Senator SPECTER. Just a minute. The pay and the cable issues are very important to the public generally, and we are now on this area which really involves where you are heading in that field. And if this statute does not give you an exemption from the antitrust laws, it seems to me you ought to be looking for it.

If it does give you an exemption, then you do not need it, and no matter who is going to litigate—and there may be someone as well as the Raiders down the road who, for the millions involved here, will raise a litigation issue. This is a matter of vital concern while we are picking up this entire web.

Mr. TAGLIABUE. Well, two further points on that. First, the words "sponsored telecasting" in that statute were intended to exclude pay and cable. That is clear from the legislative history and from the committee reports. So, that statute does not authorize us to pool and sell to pay and cable.

But it is an open question whether you could pool as a league without a statute. The American Football League pooled without a statute. The NCAA pools without a statute. And it is not clear that under the antitrust laws, you are prohibited from pooling and selling as a sports league, especially if you are a business joint venture sharing the revenues.

So, what our rights are with respect to pay and cable outside of the statutory framework is unclear.

Senator SPECTER. Well, at a time when you are trying to clarify your status, is that not a very important issue to know whether you can pool for cable and pay television——.

Mr. TAGLIABUE. Well, the Commissioner can speak to that.

Senator SPECTER. If you intend to go that route?

Mr. ROZELLE. We wanted to design this as a narrow bill. We thought that if we got into pay television, we would just create a can of worms, frankly, Senator. We think we have shown good faith by being the only league to commit 5 years into the future that we would have no cable or pay television. Everything will be on commercial television for the next 5 years.

Senator SPECTER. Well, Commissioner, I understand that. I just wanted to broach the subject. I understand that your position may be to leave that to a later day and solve your current problems. But I think it is a matter which we do want to understand your position on, and we understand we may be hearing from you further.

On the issues which are present in the pending legislation, will there be, in your judgment, any long-range effect on the owner-player relationships or the underlying labor issue? Does the DeConcini bill or my bill impact on the strength of the league or your ability to carry on agreeable labor relations and contracts?

Mr. ROZELLE. In my talks and based on other information we have gotten from the other sports unions of other leagues, they like the revenue sharing. They like to have their team receive as much money as possible so they have the leverage to get a good contract, rather than dealing with a Green Bay without revenue sharing where they suffer.

But we feel this has no bearing on what is negotiated at the collective bargaining table between the owners and the players. Right now, the owners have said, "We have done well, the sport has done well; the players are entitled to more." They have made that statement.

The difference at this time—and hopefully it will be resolved over the next month—is the form of more. They have a difference of opinion between the owner's Management Council and the Players Association over the form the additional money should take.

Senator SPECTER. There is obviously a great deal of concern about the possibility of a strike. And the question I have is would the enactment of either of these bills have any beneficial effect on precluding such a strike?

Mr. ROZELLE. We can see no basic help either way.

Senator SPECTER. One final question, Commissioner Rozelle, and this may require speculation on your part and we intend to hear from Mr. Davis at a later date. But what do you think Mr. Davis is ultimately after on his move to Los Angeles, in light of the similarity of revenues, as Chairman Thurmond was bringing out? It would be speculation as to what Mr. Davis is after.

Mr. ROZELLE. I think he likes to live in Los Angeles, Beverly Hills, and Palm Springs more than he likes to live in Jack London Square in Oakland. And I think that he envisions, with the arrangement he has made with the Los Angeles Coliseum for gates and for improvement of the stadium—he envisions the possibility of pay or cable television, and he thinks that he has the opportunity for enhanced revenues over what he could make in Oakland, even though in Oakland he was the fifth highest grosser in the league.

Now, you asked me to speculate. That is why I feel he would like to make the move.

Senator SPECTER. What is there with respect to the stadium—is the issue of the boxes that can be put there a big revenue item which can enable him to have more revenues and assist on contracting with key talent?

Mr. ROZELLE. I think that is a factor. Incidentally, the Los Angeles Coliseum, of course, was built in the 1920's and has long since been paid for. I do not know of another stadium in the country that had two major college football teams, USC and UCLA, playing there. Now, in effect, they have traded the Raiders for UCLA. UCLA was disenchanted with the terms made with the Raiders and they have now, after 50 years, moved out of the Coliseum to the Rose Bowl.

Senator SPECTER. Thank you very much, Commissioner.

Mr. ROZELLE. Thank you.

Senator SPECTER. Senator Heflin?

Senator HEFLIN. Mr. Rozelle, to what extent are the NFL member clubs business competitors of one another rather than partners or joint venturers?

Mr. ROZELLE. I think it is clear that they are partners or joint venturers. They jointly operate their own film company. They jointly operate their own merchandising company, and they share in some form or another over 97 percent of their income. Now, if that is not a joint venture—I am not an attorney, but I think it gives a number of the strong characteristics as to what a joint venture would be.

Senator **Heflin**. Now, Senator Specter asked you about labor and management issues, and I note that in the DeConcinci bill section 3 says this:

> Nothing contained in this Act shall (a) be deemed to change, determine, or otherwise affect the applicability or the nonapplicability of the labor laws, the antitrust laws, or any other provision of law to the wages, hours, or other terms and conditions of player employment within any sports league, to any player employment matter within any sports league, or to any collective bargaining rights and privileges of any player union within any sports league.

Now, is the intent of that, in effect, to say that there is no change, the status quo is maintained, and the rights for labor-management issues to be resolved by collective bargaining are maintained?

Mr. **Rozelle**. We think that collective bargaining is the forum. It is tough every time the contract comes up; it is difficult getting the owners and the players together. But I think that is where it belongs, and I think that we will get a collective bargaining agreement.

Senator **Heflin**. Well, under this provision, if this bill is passed and becomes a law, does it in any way affect the present situation dealing with labor and management collective bargaining rights?

Mr. **Rozelle**. I do not see any relationship one way or the other.

Senator **Heflin**. All right, sir. Now, Mr. Rozelle, you have described the effect on the ability of a sports league to function if members are able to violate their contracts wherever they dislike a specific provision of that contract.

Would you describe the effect if they can violate any specific provision of their contract?

Mr. **Rozelle**. I think it would be anarchy; it would be a terrible situation. We sit down at a league meeting, and under the decision in Los Angeles, that can be called a conspiracy. We have some of our owners that do not even want to come to league meetings. They will send an attorney or they will send someone else on their staff, because if we are not a single entity or a joint venture, everything we do—I include picking where we are going to have a league meeting—could be a conspiracy. That is the chief problem that we are confronted with in a situation like this. Everything you do can be a conspiracy.

Senator **Heflin**. Senator Thurmond asked you about revenue sharing, and I believe you testified that there is some form of revenue sharing of 97 percent of the revenue. Now, do you mean that there is equal revenue sharing, or are there different categories within that 97 percent of revenue sharing?

Mr. **Rozelle**. I am glad you asked that—there are forms of revenue sharing, not all of it equal. The television, which this year will be the largest single source of income, is shared equally. Green Bay, Kansas City, and Pittsburgh will get the same amount as the New York Giants, the Philadelphia Eagles, and the Los Angeles Rams. All the big-market teams will share equally.

On the gate, you keep 60 percent when you play at home; the visitor gets 40 percent. The clubs have their own local radio rights and preseason television rights—not significant factors in today's economy. The league does a national radio contract.

Our marketing income is shared from our film company and from our NFL properties merchandising and publishing entity. So, 97 percent of it is shared, not all equally, but a great preponderance of it equally.

Senator **Heflin**. All right, sir. Now, if your gate receipts are on a 60-40 basis on revenue, if we have a situation where revenue sharing is declared to be violative of the antitrust laws and you cannot have it, then what is to prevent a team from contracting with another team as to what their share of the gate receipts would be?

I know that in college football, you have different situations. There are some teams like Notre Dame and the University of Alabama that play breathers, where the gate may be, in a large football field, a total gate of $500,000. But they will contract with a very small college—Slippery Rock or somebody else—to come and play and their gate receipt would be a guarantee of no more than $50,000, and the home team keeps $450,000.

Now, if revenue sharing is illegal and we get into a situation where a bottom team that has not done too well for the last 2 or 3 years goes and plays the New York Giants, the individual contracting on that, of course, raises a serious question.

The television then is left open, we will say, to Green Bay which is in competition with people in its area. And I might say that you might have situations with Cincinnati or Tampa Bay, or maybe even Kansas City or some of the others, and they have to then contract with their local TV area.

What will be the ultimate effect? If you do not have revenue sharing in categories not always equal, what would be the effect on these areas with smaller TV markets and with smaller populations and drawing crowds? Will we soon see the demise of Green Bay, Kansas City, Cincinnati, and Tampa Bay?

Will we then tend to see professional football located primarily in high population areas? This area here of the east coast from Philadelphia and Washington up to New York, instead of perhaps maybe the 3 or 4 teams we have here now, it is entirely possible that 10 or 12 of the teams may locate in this area and there may be no teams in the South and no teams other than in the Los Angeles area.

What are the consequences of revenue sharing being declared illegal? What do you see 10 years from now relative to the consequences if that were to occur?

Mr. **Rozelle**. Well, if every team kept all of its home gate receipts, obviously Green Bay would keep all of the money they made at home. But then they go into New York, Los Angeles, and Chicago—bigger stadiums—and they do not get the 40 percent; the home team keeps all the money. And if they are put on their own for television to get what they can, obviously their market—88,000 in the city itself, I believe—cannot compete with your multimillion population big cities.

It would not be a case of not being competitive. In a very short period, they would have to fold. They could not exist.

Senator **Heflin**. You know, we have had an interesting couple of years here in Congress in which we have had a program called Reaganomics, and we were told that everything is closely fine tuned; that one part is dependent upon another part, that we have got an overall program and if something gets out of line, then it will not work.

Now, professional football, I gather, has been carefully orchestrated and fine tuned in the past in the location of teams at certain places, working together in regard to the television and the sharing of stadiums and these other matters. If that falls apart and there is no overall direction that is given to it, can we look to a day when some people who may be opposing the concept of the legality of revenue sharing may be killing the goose that lays the golden egg?

Mr. ROZELLE. I would fully anticipate that. You certainly could not plan to expand the league. You would have a situation where you could not count on the future and I believe that your clubs would be gradually folding.

We had that. We were up to 28 teams, I believe, in the late twenties and it had gone down to 12 teams in the early thirties, which was when the league decided they had to do something and they set up the draft principle on taking players in order, the weaker teams from the previous year picking first and the better teams later. And it was the only way they could do it because all of the players wanted to play with Chicago, the Redskins or the Giants, and the other teams were not doing well because those three dominated, so they folded. And only the introduction of the draft, I believe, in 1933 kept it going.

But if we do not have revenue sharing and no way to give everyone an economic floor to compete equitably, it will not work.

Senator HEFLIN. That is all.

Senator SPECTER. Senator DeConcini?

Senator DECONCINI. Mr. Chairman, thank you.

Mr. Rozelle, to begin with, have you or the NFL made any commitments to any Member of Congress—the House of Representatives or the Senate—to grant a franchise to any State or location in the past 12 months or 24 months, or anytime?

Mr. ROZELLE. I am glad you asked me that because when you read your statement and said something about "we who are going to get franchises"—I believe that is the way it will appear in the record, but I know you did not intend it.

We have not. Phoenix has come to us; they approached us. San Antonio approached us—city leaders or people interested in the franchise. Birmingham, Memphis, Jacksonville, Indianapolis—all these cities have come to us. They want to know now. They know that we last expanded in 1976 and they say, "When can we expect expansion?"

We have told them very simply that we cannot plan on expansion during this period. We do not know what is going to happen. We do not want to be sued. We do not want to pick a city and then have the owner in that city move out. We do not know, now that revenue sharing is questioned, what sort of arrangement a new owner would realize he would have on a franchise.

But to answer your question, no one—no city, no politician, no one—has been told he will get an NFL franchise. They have all been told, whether a Congressman or some of these other cities that were not represented by Congressmen—we simply told them, when we get legislation and things clear up, I am going to appoint an expansion committee because I think we are ready to go from 28 to 30. And not one person has been promised a franchise.

Senator DECONCINI. Thank you, Mr. Rozelle, for clarifying that. Also, that would not necessarily rule out Los Angeles in the event that the Oakland Raiders stayed in Oakland?

Mr. ROZELLE. No, it would not. Los Angeles wanted one in 1978 and it was too soon after our 1976 expansion. But Los Angeles would be considered on the next round of expansion, yes, sir.

Senator DECONCINI. Now, there have been a number of questions here and I just want, for the record, to make it very clear I am very sensitive to the question of how sports antitrust legislation would affect the league's relation with players' unions and their members.

The bill which I have introduced is narrowly drafted to keep labor-management issues outside the scope of its antitrust protection. Once again, on the record, what is the league's position on the relationship of this legislation to any labor issues?

Mr. ROZELLE. We do not feel that it affects any labor issue. If it does, or should this be amended on the floor of the House or the Senate to adversely affect the players, we will fight the bill, as we advised Senator Thurmond and Chairman Rodino.

Senator DECONCINI. And any such amendments?

Mr. ROZELLE. Including the amendments, yes, sir.

Senator DECONCINI. Thank you. I have one other question, Mr. Rozelle. As you could tell from my statement, my feeling is that something needs to be done to protect communities with franchises, whether Phoenix is ever one or not.

What does the NFL do if you are confronted with the following hypothetical situation? An owner is at the end of a lease with a city stadium and the city is asking a great deal in increase of rent, and the owner says, "I do not want to pay it; I cannot afford to," and they refuse to go to arbitration. Consequently, what recourse does that owner have? Can he come to the NFL and say, "Look, I just cannot afford to pay this; these are the reasons?" Is that a justifiable reason to be considered for a vote on whether or not to move?

Mr. ROZELLE. Yes. It has to be a two-way street, the cities and the clubs on both sides trying to make a deal. In Baltimore, as an example, they had a problem. The owner talked about leaving. I met with Governor Hughes and Mayor Schaefer of Baltimore. We will sit down and determine whether they are being fair, and try to encourage them to do what they can commensurate with the length of lease the individual is going to sign.

Senator DECONCINI. In the case of the Oakland Raiders, did you participate in any discussions with the city and the owner of that team before they moved to Los Angeles?

Mr. ROZELLE. I was advised by the people of Oakland that they were told by Al Davis that if they saw me, then they could no longer negotiate and he was going to go. That was during the period when he was negotiating in Los Angeles secretly and in Oakland, and he did not come to me for help with the authorities. He told them if they attempted to come to me, then he was through negotiating with them.

Senator DECONCINI. Did they come to you?

Mr. Rozelle. Not until after the fact, after announcing his move, as I recall.

Senator DeConcini. Are you aware—I have not had a chance to look at all the depositions from the case—what the arrangements are with the city of Los Angeles and the use of the coliseum?

Mr. Rozelle. Not specifically now. The original memorandum of agreement that was signed by Oakland with the LA Coliseum was apparently questioned considerably later by the taxpayer critics and they had to make adjustments in it. We have provided a copy of it, but I cannot give you the——

Senator DeConcini. That is fine. I would like to ask another hypothetical question related to the recent Oakland Raiders decision. If Memphis or Birmingham or Phoenix were granted a franchise and established a team—if that decision is upheld and this legislation is not passed—that means clearly that the owner could move to Albuquerque, Indianapolis or anyplace else anytime they wanted without any regard to what the investment might be of the community other than what contract they might have with that community based on a lease or what have you. Is that correct?

Mr. Rozelle. That, in effect, is correct. We try to select an individual that is important for the community and would want to stay there. That is not altogether possible today with the economics of pro football, and you could have an individual who would stay there for 4 or 5 years and then, in effect, put his club up for auction and move elsewhere.

Senator DeConcini. Even if the club was doing well, as in the case of the Oakland Raiders?

Mr. Rozelle. Yes.

Senator DeConcini. And when you grant a franchise to an individual owner or owners, what kind of commitment do you get from them to stay? Is the commitment you had from Oakland in writing? Is that part of the franchise, or was that a verbal, moral commitment to stay as long as they were doing well?

Mr. Rozelle. The commitment with Oakland was signed in 1966. All 26 clubs in the league signed the agreement.

Senator DeConcini. And it specifically stated that as long as the team was supported by the community——

Mr. Rozelle. That was the commitment to Congress that was signed, and also our merger agreement with their partners in the league.

Senator DeConcini. So, it was part of the contractual arrangement, and in your judgment, of course, there was certainly every indication that the community was supporting that team?

Mr. Rozelle. I do not know of anyone else in the history of the league that has had 12 straight years of sellouts in preseason as well as league games; yes, sir.

Senator DeConcini. If the NFL elected to give a new franchise to Oakland, assuming nothing was done here legislatively and if the ninth-circuit upholds the decision of the lower court, would you anticipate that a new franchise in Oakland could succeed based on past histories of new teams anywhere near as well as the Oakland Raiders have?

Mr. Rozelle. Well, two steps. If the legislation did not pass and we did not win the court appeal, my feeling of the reaction of the owners in the league—I do not feel they would expand. So, it would not be a question of whether Oakland would get a franchise. They would be concerned about revenue sharing and that if they picked a community, the team could leave it.

So, I would question whether they would approve expansion.

Senator DECONCINI. Well, if they did——

Mr. ROZELLE. If they did, Oakland would obviously, because of our feelings, get very strong consideration, which would mean if we selected Oakland because of Al Davis' move, we would be forced to expand to Oakland and just one other place for our expansion period.

Senator DECONCINI. Based on experiences where you have had successful teams move, what kind of revenue advantages would you anticipate from a new team in Oakland, or could you speculate? Would it be anywhere comparable for the first 5 years as it has been for the last 5 years of the Oakland team?

Mr. ROZELLE. No. It would be closer to the earlier days when they were building.

Senator DECONCINI. Thank you. I have no further questions. Thank you, Mr. Chairman.

Senator SPECTER. Senator Leahy?

Senator LEAHY. Thank you, Mr. Chairman.

Commissioner Rozelle, I would note for the record that there are no rumors going around Vermont that a team is coming there searching for a franchise.

Senator HEFLIN. Alabama would like to play the University of Vermont for its opening game. [Laughter.]

Senator LEAHY. Well, we will invite you up in January when it is about 40 below zero and we will be happy to play you at that time. [Laughter.]

Let me ask you a few questions. Why, really, should we make any legislation like this retroactive? Is it not more fair to guarantee that whatever we may pass out of here—even if we decide that sports leagues are unique and even if we decide they need relief from the antitrust laws, is it not more fair to make our actions prospective rather than retroactive?

Mr. ROZELLE. I merely point out that in taking the stand we did, defending at treble damage risk two suits in Los Angeles, we relied on contentions made as far back as the mid-1960's by Congress, saying we feel that clubs that are well supported should not move. There are statements in the Congressional Record to that effect.

In the Los Angeles court, we were told the judge would not let the jury consider fan loyalty, community support, and pledges made by Oakland when the stadium was put up. None of those things were considered.

Now, when I was here earlier this session, I was told, "Let us see what happens; maybe it will be clarified." Now we have a legal maze out in California and I am returning. Last November and December they said, "If you have a problem, come back. You do not have one yet."

Now we have Oakland planning to play in Los Angeles. We have an eminent domain case from the State supreme court that completely conflicts with the jury's antitrust decision in Los Angeles.

And I think that we have a tangled situation that merits congressional action.

Senator LEAHY. Let me ask a question that I am sure I am going to be asked by constituents. Can we rely on the league to protect the interests of fans in the smaller communities all by itself, or should we not draft into legislation some rights that will go directly to those communities to object to relocation decisions?

Instead of leaving it all in the hands of the league, should not some of the communities themselves have a voice and have it spelled out very directly in whatever legislation we might pass—a voice allowing them to object to a relocation decision?

Mr. ROZELLE. In the case of the National Football League, I would rely on our 30-year record—actually, since postwar—in our treatment of franchise moves. I would rely on that. Beyond that, we are concerned that if you establish guidelines, you run into, occasionally, manipulative deals on income. You might hire a number of people in the family on your club and so you show a loss for 3 straight years.

I think it is difficult to envision all the things that could be done, but I think that any community protections would be subject to court cases themselves, which is the problem, as against leaving the league responsible. Now, when you leave the league responsible, the league is the one that comes to you. You call me on the carpet, as you have done on several occasions with the television blackout bill. I am the one that has to answer for the other clubs in the league, and I tell them, "We have to have a valid position if I am going to represent you before Congress."

I think the leagues are best equipped to weigh the maze of factors that can be taken into consideration when a club moves.

Senator LEAHY. But you do not think that those communities should have at least some kind of a voice spelled out in the law? You mentioned they will be going to court, perhaps, anyway. But if their rights were spelled out specifically by statute, that also might be a limiting factor on what they could do in court because I would assume, depending upon how we wrote the rights, the courts would look first to the question of what was in the law.

If a community were to bring suit because of a relocation, the courts would at least initially, and probably ultimately, limit them only to those rights and only to those questions that had a basis within the statute. Would it not make for more certitude if we gave the communities specific rights in the law?

Mr. ROZELLE. Of course, this bill does not touch on that. This only permits a league to keep a team in its present location.

Senator LEAHY. This bill could go through a lot of changes by the time it gets on the floor of the Senate.

Mr. ROZELLE. Right. So you are suggesting that in the case of a team moving, rather than leaving it an open issue—you could be challenged as you can today under antitrust—putting in specific guidelines.

Senator LEAHY. Right.

Mr. ROZELLE. Our only trouble in going over the guidelines is what I said earlier. I think they would prompt litigation and disputes. You can juggle guidelines if you are the owner of a club. I think there has been some suggestion on that in the case of teams in other sports.

I think that if they could be done, we would have no objection. But I think they would cause an awful problem in trying to reconcile every factor that should be taken into consideration.

Senator LEAHY. Thank you.

Mr. Chairman, I want you to know that Senator Heflin and I will invite you and members of the committee and Mr. Rozelle when we have that January game in Vermont.

Senator SPECTER. We will look forward to that, Senator Leahy.

Senator LEAHY. OK.

Senator DECONCINI. Do you have a stadium?

Senator LEAHY. It is an outdoor one, let me tell you.

Senator SPECTER. We have seven witnesses left, and while we ordinarily proceed, whenever we can, without a break, there has been a motion at the table here from the distinguished Senator from the Alabama Crimson Tide for a brief recess for lunch. And notwithstanding his comment about Slippery Rock, which is in Pennsylvania, we will take a luncheon break until 1:30 and we will reconvene at that time.

[Whereupon, at 12:34 p.m., a luncheon recess was taken.]

[Mr. Rozelle's prepared statement and a copy of the constitution and bylaws of the National Football League follow:]

PREPARED STATEMENT OF PETE ROZELLE

Introduction

Mr. Chairman and members of the Committee, I appreciate the opportunity to testify this morning on S. 2784, the "Major League Sports Community Protection Act", and S. 2821, the "Professional Football Stabilization Act", both of which would clarify the application of the antitrust laws to professional sports leagues. My particular thanks to you, Mr. Chairman, for scheduling this hearing. I know it is a busy time and late in the session, but your accomodation for the benefit of sports and the public interest is very much appreciated. To Senator DeConcini and the 11 cosponsors of S. 2784 and to Senator Specter who introduced S. 2821, my thanks as well for your recognition of the need to protect communities that support professional sports teams from arbitrary relocation.

Both bills being heard today are designed to protect host communities from abandonment by well-supported sports franchises and both acknowledge that in order to do so there must be a clarification of the antitrust laws as they apply to professional sports leagues. Your hearing today recognizes that prompt legislative action is essential to address these issues, and the NFL agrees. The two bills before you differ in their approach to the problem. I understand that commissioners and spokesmen of other sports leagues will be invited to testify on this issue. But on behalf of the National Football League, I must state at the outset that for the reasons outlined below, we strongly prefer the approach of S. 2784.

On several occasions, I have testified that the application of antitrust law and policy to professional sports leagues remains confused, unsettled, and completely unpredictable after over thirty years of almost ceaseless litigation.

Recent events and constant litigation have underscored the fact that this situation serves no fan interest, no public interest, no player interest, and no league interest. The litigation pursued in Los Angeles over the relocation of the NFL's Oakland Raiders franchise simply underscores what has been apparent for many years -- Congress must act to provide for the consistent and sensible application of antitrust rules to sports leagues.

We are gratified that both Houses of Congress are now considering legislation that is a necessary and important step to protect the consumers of our product -- sports fans, and the general public. H.R. 6467, a companion bill to S. 2784, is currently sponsored by more than 130 members of the House of Representatives, including a majority of the Judiciary Committee and members of both the Democratic and Republican leadership.

The Major League Sports Community Protection Act has also been endorsed by dozens of mayors across the country. While they will no doubt explain why they support this legislation, the answer, in my view, is evident -- this Act would provide much-needed protection of the investments that fans and communities make on behalf of professional sports teams. In a league such as the NFL, the protection of these public investments depends on league responsibility for both franchise location and the equitable sharing of league revenues. S. 2784 deals with these two subjects, and this legislation will prevent the spectacle, now under way in California and inevitably to follow elsewhere, of sports teams abandoning loyal fans and taxpayers in smaller and mid-sized communities in an effort to exploit short-term and unilateral profit opportunities presented by pay television and other factors in our nation's few largest metropolitan areas.

S. 2784 also relieves communities and leagues of another impossible burden -- that of living with Catch-22 standards that expose them to antitrust suits no matter how they deal with proposed team relocations. Under developing antitrust theories, the NFL would have been damned in antitrust had it allowed the Raiders to move out of Oakland just as it was damned in antitrust when it refused to allow a Raiders relocation. In addition, the City of Oakland has now been sued under the antitrust laws by the Los Angeles stadium authorities for having obtained a favorable ruling from the California Supreme Court in the City's eminent domain suit. S. 2784 eliminates the potential for such unreasonable and unfair results.

The Two Bills: S.2784 and S. 2821

Mr. Chairman, it bears repeating that we are not supporting S. 2784 because, as some have inaccurately charged, it is a bailout bill for the NFL. The NFL will find a way to survive the abandonment of Oakland by the Raiders, if that is forced on us by a Los Angeles antitrust court. But the impact on the Oakland community will be devastating, and I doubt that Oakland, similarly situated communities throughout the Nation, or the NFL will easily survive misguided antitrust concepts that might ultimately entitle highly profitable teams to walk out on communities. If I had appeared before this Committee four or five years ago and asked whether the League should move a successful team out of a municipal stadium built for professional football with annual public bond debt of $1.5 million through 2006, I know what your answer would have been. Or if I had asked the Committee if it supported the unilateral "auctioning" of NFL teams and the transfer of the League's best supported and most financially successful clubs, I know what your directive to the League would have been.

S. 2784 is a narrow piece of legislation that will reform and make rational the application of our antitrust laws to professional sports in two very basic, limited, and specific ways.

First, S. 2784 would confirm the right of sports leagues to maintain a team in its current home territory. It is important to understand that the bill is a one-way street. It does not immunize league decisions to relocate franchises. Under this legislation, leagues would have no greater privilege to relocate teams than they have today. To the extent that decisions to relocate teams are currently subject to antitrust challenge, they would remain equally so under this legislation. The bill only permits leagues to act to protect the interests of fans and their home-area communities. So far as S. 2784 affects team location, this is its only effect.

I might note here, Mr. Chairman, that there has been some concern that the language of H.R. 6467 would immunize a league's decision to relocate a franchise. We do not agree with that interpretation and the bill is not intended to so provide. However, to the extent that any question remains, the NFL will support any necessary clarifying amendment to bring the language of the House bill in line with that of S. 2784.

Second, S. 2784 would confirm the right of sports leagues to continue to provide for the division of league or club revenues in a manner that tends to reduce financial disparities among the clubs. This provision would sanction practices that have made it feasible to establish and preserve professional football in small and mid-sized communities across the country. The NFL's long-standing revenue sharing policies now produce a division of some 97% of the total revenues the League generates. Prior to the Los Angeles litigation, I would not have thought any issue even existed as to the propriety of such practices. Congress and even long-time critics of the League have warmly and repeatedly endorsed these practices and urged them on other leagues.

Revenue sharing is the central factor that has made it feasible for the League to grow from 12 to 28 teams over the last 22 years. Without it, future NFL expansion could be impossible. Revenue sharing is the key to maintenance of geographic and competitive balance in professional football, and is therefore an essential part of any sports-antitrust bill. We fully support its inclusion in S. 2784.

In addition to being limited to these two specific matters, S. 2784 expressly provides that it does not apply to any player employment or collective bargaining matter, to any pay television or other broadcasting issue, or to any conduct with respect to a competing sports league. Finally, the antitrust immunity currently enjoyed by professional baseball would be unaffected by this legislation.

I stress the precise and narrow limits of this bill, Mr. Chairman, because much of the criticism directed against it has been either misguided or intentionally misleading. This bill is not anti-player. It is not anti-union. It does not give the NFL a green light to move franchises at will. And it provides no incentive for us to shift from free network television to pay television.

The NFL's Policy on Team Stability

Mr. Chairman, a review of the NFL's operations over the past thirty years plainly demonstrates the NFL's firm commitment to competitive and geographic balance, franchise stability, and protection of fan and community interests. The NFL fully supports a national policy of maintaining stable team-community ties. We believe that well-supported and financially successful clubs should not, except in the most extraordinary circumstances, be permitted to relocate outside of their home territories. At no time since World War II has any well-supported NFL club been permitted to relocate outside its home territory. In 1953, a bankrupt Dallas club was transferred to Baltimore, and in 1960, the troubled Chicago Cardinals were moved to St. Louis. Both clubs continue to operate in those communities today.

It is worth emphasizing, I think, that the NFL's ability to conduct team operations on a nation-wide scale, in communities of vastly differing economic potential, and its ability to insist upon team-community stability is directly tied to the partnership structure of the League itself, including its revenue-sharing principles. Such revenue sharing is a further reason for affording leagues the right to determine whether successful team operations can be conducted in a given locale. Today, almost 60 percent of the revenue of the average NFL club comes from network television contracts; these revenues are shared equally among the 28 clubs. When 97 percent of League-wide revenues are broadly shared, as in the NFL, the advantages of the clubs in the largest population and media markets are to a large extent offset by their own contributions to the teams in smaller and medium-sized communities and markets. Next season, for example, the Green Bay Packers will receive $11.8 million in network television revenues from the 1982 season contracts. This network television distribution is likely to represent more than 60 percent of the Packers' total operating revenues. Without such League partnership practices, NFL franchises could not survive in many smaller and mid-sized communities, and franchise failures and contraction of the NFL itself would be most likely.

In addition, congressional views have directly encouraged the League to follow this policy. In 1966, for example, in connection with the proposed merger of the NFL and the American Football League, there were serious congressional concerns, expressed both publicly and privately, about possible franchise transfers. In response, we made private and public commitments to Congress that no franchise, in particular the Oakland Raiders, would be moved so long as it remained well-supported in its home community.

With reference to the 1966 statute authorizing the NFL-AFL merger, I have noted suggestions that the leagues somehow forced that legislation through an unknowing and uninformed Congress. Nothing could be farther from the truth, and the record of congressional evaluation of sports-antitrust issues in the late 1950's and through the 1960's strongly confirms this. The merger statute itself was the subject of hearings and debate. It was also a narrow and very specific statute that has proven to serve public interests, league interests, and player interests in the subsequent development of professional football as the nation's premiere sport. In addition, in the two years preceding enactment of the merger statute, this Committee had held thorough hearings on sports antitrust issues; in both 1964 and 1965 this Committee had reported to the full Senate bills recognizing the entirely unique business nature of professional sports leagues and the special public interests in geographic balance in the location of sports teams. Moreover, in 1965, the Senate had passed S. 950, a bill recognizing these unique aspects of sports leagues and limiting the applicability of the antitrust laws to various aspects of league operations. What I am suggesting, in short, is that the Congress which enacted the merger statute in 1966 was fully informed and apprised of all of the implications of that statute, and suggestions that the merger statute was somehow "railroaded" are misguided and a disservice to the Congress itself as well as the NFL.

Apart from the 1966 statute and commitments, the NFL has promoted and required team stability because it is sound business policy as well as sound public policy. As a League, we recognize that community support and public investments in stadiums and related facilities are vital to the League and to communities as well. We also recognize that such investments, financial and emotional, have been massive. Since 1960, for example, 25 NFL clubs have commenced operation in new or significantly improved stadiums; nearly all of these stadiums were built or improved at least partially with public funds or public guarantees of financing. Congress itself authorized such public financing of the RFK Stadium here in the Nation's Capital. As a result of this wave of stadium construction in the past two decades, 19 NFL teams have "relocated" their operations from one local stadium to another during this period. Several of these new stadiums were in suburban locations. But no NFL club has been permitted to abandon its home territory, to walk away from its fans, or to ignore public investments in a stadium built for professional football -- at least until the Oakland Raiders, in violation of their own contractual commitments, secretly negotiated a lucrative deal in their rush to abandon Oakland. Until then, the antitrust laws had not been used to undermine the interests of consumers. Only the Congress can reconcile this conflict, and I submit that it should be squarely resolved in favor of the consumer.

Twice during the 1970's, successive owners of the Baltimore Colts have considered relocating the team outside of Baltimore. In 1971 the League refused to authorize the transfer, because the Colts were highly successful on the field and well-supported by their fans. More recently, I have personally met with Governor Hughes of Maryland and Mayor Schaefer of Baltimore in an effort to develop ways to preserve Colts' operations in Baltimore.

In 1973, the League worked with local officials to secure improved facilities for the Buffalo Bills. Once the new facility was agreed upon, the Bills committed to remain in the Buffalo community for twenty-five years.

In the late 1970's, the Minnesota Vikings considered relocating outside of the Twin Cities. Rather than authorize a transfer, the League worked with community and state officials to secure construction of a new, multi-purpose stadium. As part of the agreement to construct the Hubert H. Humphrey Metrodome in downtown Minneapolis, the League itself guaranteed the stadium a professional football tenant for at least the next thirty-five years.

We are proud of this record of league stability and believe it amply demonstrates our commitment to fan and community service. NFL fans know where NFL teams are and can identify with them locally, regionally, and nationally. Team stadium transfers during the last two decades have been strictly within a metropolitan area, have been made with local commuting and television patterns firmly in mind, and have resulted in superior facilities to better serve local fans. Today the League By-laws require approval by the membership even for local stadium relocations. In short, the assertion that the Raiders should be permitted to abandon Oakland for a stadium 400 miles away because the Buffalo Bills now play in a modern stadium in Orchard Park, New York, or the Dallas Cowboys in Texas Stadium in Irving, Texas, is rhetoric without substance.

This is also true of the notion that the Raiders should be permitted to abandon Oakland because the Los Angeles Rams now play their home games in Anaheim. That move, of only 30 miles, is a total contrast to the Raiders' effort to relocate some 400 miles away from their home fans and community. In choosing to play in the Anaheim stadium, the Rams deprived no local resident of the opportunity to continue attending their games in person. Indeed, a 1978 Los Angeles Times survey concluded:

> "The Rams would not be bucking popular sentiment if they left the Coliseum . . . . More of those interviewed would favor moving the Rams to Anaheim Stadium than would like them to stay put, even though about 80% of the respondents were from Los Angeles County and only about 20% from Orange County."

The Rams decision to play their home games at the "Big A" Stadium came after years of intensive, but unsuccessful, negotiations with the Los Angeles Coliseum over important issues of stadium improvements, fan comfort, and security. During those negotiations, the Rams offered to sign a long term lease with the Coliseum in return for those improvements and even offered to fund a substantial part of them. Each proposal was rejected by the Los Angeles authorities. The result, as was summarized by the attorney for the Los Angeles Coliseum in court, was that "we got into a fight with Anaheim to preserve the tenancy of the Los Angeles Rams . . . . and we did a very poor job."

Since the Rams began play at the "Big A", over 80 percent of Rams fans have renewed their season tickets. In addition, because Rams games at the "Big A" are invariably sold out, which was rarely the case at the Coliseum, Rams football is now available on local television throughout Southern California. There is no question but that the shift from the Coliseum to the "Big A" has benefitted local fans. The same, of course, cannot possibly be said for the Raiders' relocation from Oakland to the Los Angeles Coliseum.

NFL Policy on Revenue Sharing

Both the League and the Congress have a history of support for revenue sharing. In addition to providing the economic base for franchise stability, revenue sharing is vital to preserving competitive and geographic balance within a sports league. Since the NFL clubs are co-producers and co-sellers in producing and marketing the NFL product, the sharing of revenues generated throughout the League is an inherent prerogative of the member clubs. In 1982, the 28 member clubs of the NFL will share some 97% of League revenues including network television revenues, gate receipts, net postseason game proceeds, and marketing income. Under the League's revenue sharing formula, clubs operating in small or mid-sized comumunities, such as Buffalo, Green Bay, Kansas City, and New Orleans, receive the same network television income as clubs in New York, Chicago, and Los Angeles. Under such practices, temporarily "down" clubs, through television receipts and road game receipts, can remain viable, continue to offer comparable employment opportunities to players, and escape the downward spirals which could otherwise jeopardize their very existence.

NFL revenue sharing is designed to ensure that each club, irrespective of the size of its community, stadium, or television market, has a comparable opportunity to field a championship team. Since 1970, all but two teams have qualified for postseason playoffs, and the 16 Super Bowls to date have resulted in nine different League champions. Indeed, of the 32 participants in those 16 Super Bowl games, only three (the New York Jets, Philadelphia Eagles, and Los Angeles Rams) have come from the nation's five largest metropolitan areas.

Revenue sharing also serves to encourage geographic balance nationally. Without revenue sharing, teams in small or mid-sized communities could be forced to either discontinue operations, move to a larger community, or field a consistently weak playing squad. Without revenue sharing, many communities would find it increasingly difficult to obtain or maintain membership in professional sports leagues.

Congress recognized this when it passed the 1961 Sports Broadcasting Act, in part to provide "the weaker clubs of the league [with] continuing television income . . . on a basis of substantial equality with the stronger clubs."

After an exhaustive study, this Committee in 1964 commented on

> "the public interest in teams which are as competitively equal as possible, and the responsibility of the 'league' of teams in maintaining both competitive and geographic balance. Without competitive and geographic balance, the leagues and their weak teams are unable to attract and hold the public interest which is necessary for their survival."

One year later, this Committee concluded that "in the field of professional team sports, the public is best served when the teams within a league are evenly balanced." Each congressional study has elicited testimony that revenue sharing is perhaps the single most effective means of preserving balanced competition within a sports league.

Player interests are directly benefitted by this practice. Revenue sharing has enabled the NFL steadily to increase the number of its franchises, increasing the number of players offered regular-season NFL employment from some 400 during the 1950's to 1600 today. It is the principal basis of the League's ability to offer comparable employment opportunities and economic rewards at each team location. The playing-field balance it helps to produce makes possible the League-wide ticket-sale revenues and the increased television income which underlie League-wide payrolls and collective bargaining commitments.

It is important that this Committee address the question of revenue sharing as part of any sports legislation. No one has heretofore contended that such practices represent antitrust violations, and the League certainly does not believe that they are. As George Halas stated in his testimony to the House Judiciary Committee last December, the current League would not exist today without such practices. But given current antitrust confusion, including rulings treating a league's member clubs as independent enterprises having a right to maximize revenues and profits as they individually choose, even revenue sharing practices may be questioned. If NFL member clubs are to be considered the equivalent of independent grocery stores, tomorrow's antitrust court could conclude that "business competition" among the clubs would be more robust if revenue sharing were abandoned, with each club permitted to pursue its own revenues, including use of such schemes as independent networking or pay television.

The Appropriate Scope of Legislation

Let me now briefly comment on S. 2821, which would permit the relocation of professional football teams if the club seeking to move meets one or more of the standards found in the bill. While the NFL endorses the public policy underlying S. 2821, we believe that S. 2784 represents a more satisfactory and workable solution to the problems discussed.

In our view, there is no current need for an antitrust immunity for sports leagues to move teams even if pursuant to the standards fixed by S. 2821. The immediate danger is that well-supported and successful teams will misuse the antitrust laws to enhance their short-term profit potential. Congress should limit its consideration of franchise relocation to this current concern.

Under standards such as those proposed in S. 2821, clubs desiring to relocate could manipulate their own financial performances or their relationships with local stadium authorities in an effort to come within the standards to move, irrespective of whether the league believed a case had been made. A leading authority on sports-antitrust law has testified that "any regulatory proposals in the sports area would have to confront the problems of unsettled standards for profitability, a significant potential for evasionary conduct, and the prospect of extensive supervision of third party conduct. Adequate treatment of these concerns is likely to require something more than a simply regulatory structure."

Once a regulatory structure is instituted as a substitute for responsible league conduct -- on an issue where leagues have powerful incentives to act responsibly, then that structure will become ever more complex or it will prove ineffective.

Reliance on fixed standards, appealing though it may seem, will also simply promote bitter and protracted litigation, as local courts, with varying local interests to serve, interpret a team's lease, profitability, and competitiveness to suit their own views of the merits. In other words, in deciding between S. 2821 and S. 2784, this Committee must decide whether it wants to write a broad antitrust exemption that may include potential loopholes for team relocations or to limit itself to exempting only league decisions that protect the interests of the home area.

These concerns are borne out by experience. In the mid-1960's, the Milwaukee Braves were sued over their proposed relocation to Atlanta. A Wisconsin state court independently restructured the team's financial statements to show operating profits, rather than losses, for their most recent seasons in Milwaukee. On that basis, it enjoined the proposed transfer. A state court in Atlanta, not surprisingly, ruled that the transfer should go forward; it took a federal court in Houston to resolve the conflict between the two contesting cities. Fixed standards are more likely to increase the problems of forum shopping and inconsistent court decisions. They will do little to resolve the lack of predictability or rationality in the application of the antitrust laws to professional sports.

The preferred answer to issues of unjustified sports team transfers lies in allowing the sports league themselves the privilege of assessing the merits of a proposed transfer under their own internal contract commitments. It is the leagues and not the individual clubs which have the incentives to assure that interests more fundamental than the profit potential of the local owner are served. And the leagues are regularly called upon by the public, Congress, and the media to justify their conduct and to demonstrate that their practices comply with public interests. A league can resist the temporary pressure of a "down" economic cycle or a poor year on the playing field when an individual club may choose not to. The Raiders will not suffer from their own disregard for their fans' interests, but the interests of the Oakland community and the League's reputation will.

Let's say, for a moment, that the NFL members had approved the Raiders' abandonment of Oakland. Imagine your reaction if I appeared before this Committee today and informed you that, in making its decision, the League considered such terms as "goodwill", "community and league stability", "fan loyalty", and the like to be mere "buzz words"; or if I told you that prior League commitments to the City of Oakland were of no concern to the League; and that "fairness" had nothing to do with the issue. In fact, these positions were expressly put forward by the League's opponents and accepted by the Court in Los Angeles.

In the NFL's view, any franchise proposing to transfer from its home area has an obligation to make a clear case for doing so. The factors and recognitions I suggested a moment ago, as well as commitments to communities and Congress, will be more effective in bringing about responsible and fair-minded decisions by sports leagues on issues of team location than a set of fixed standards that will inevitably operate to the exclusion of other relevant factors in particular instances.

We prefer the approach outlined in S. 2784 for three additional reasons: first, because it specifically authorizes revenue sharing; second, because it enhances the protection of fans and communities by including the professional sports of basketball, hockey, and soccer; and third, because of its particular treatment of the Oakland Raiders' effort to transfer to Los Angeles. It is to this final subject that I now wish to turn.

The Raiders Proposed Relocation

Before addressing the Raiders case directly, I think it important to note that there is no evident disagreement among the bills as to how that case should be treated by the Congress. S. 2784, S. 2821, and H.R. 6467 are each intended to confirm the NFL's decision that the Raiders should continue to operate in Oakland. Should the Committee choose to endorse the approach outlined in S. 2821, it should recognize the Raiders could not possibly meet any of the standards set forth in that bill. Indeed, there is only one standard under which the Raiders could justify their abandonment of Oakland: that an individual franchise owner, irrespective of commitments to his league, his community, and his fans, is justified in relocating wherever he sees a higher profit potential elsewhere. The Oakland Raiders were third among the League's 28 members in total gate receipts, fifth in the League in total revenues, had an equal share of League television receipts, and were operating with a preferential stadium lease when they announced their intention to move.

S. 2784, like H.R. 6467, applies to all future and pending relocations of professional sports teams, including the Raiders move out of Oakland. This is vital to protect public investments and interests; it is consistent with established principles and practice; and it is fair. The bill applies to the pending Raiders relocation because, among other things, the stalemated litigation over the Raiders move has produced an irreconcilable conflict between federal and state law.

The California Supreme Court recently held that the City of Oakland could condemn the team in eminent domain to prevent it from abandoning Oakland where it is vitally important to the community's well being. The Los Angeles authorities have now filed another federal antiturst suit recognizing that this State Supreme Court decision may eventually require the Raiders to operate in Oakland. Only Congress can avoid such conflicts in our federal system, and it is appropriate to do so immediately without requiring the Oakland community to make massive further expenditures of taxpayer funds to keep its team. In short, since the present issue involves unique community interests, prior congressional policies and representations to Congress, and conflicting principles of state and federal law, it is fundamentally different from any other legislation before Congress.

A review of Raiders' operations in Oakland also makes clear why it is so terribly unjust to permit the team to abandon those fans and that community. Since 1966, the Raiders have, on the playing field, been one of the two most successful franchises in professional football. They have played in three Super Bowls and ten conference championship games. In other words, in the terms of S. 2821, there is no issue as to the Raiders' ability to "properly and competitively" operate in Oakland or in the Oakland-Alameda County Coliseum.

Nor has there been any suggestion that Oakland authorities have failed to comply with a material term of the stadium lease. Indeed, throughout 1979, 1980, and 1981, the community offered the Raiders several new lease proposals that called for reduced rent and expenses, sharing of concessions revenue, construction of private stadium boxes, and expansion of the stadium's seating capacity. These proposals would have generated vast new revenues for the Raiders, but they refused each proposal, insisting on a short term lease wholly insufficient to permit the stadium authority to amortize bonding for the improvements the Raiders had demanded.

Throughout the 1970's the Raiders were one of the League's best-supported and most financially successful franchises. In 1978, the year before they undertook secret negotiation to move to Los Angeles, the Raiders had profits of over $2 million. In 1979, while taking every possible step to avoid reaching a lease agreement in Oakland, their profits were nearly $1.5 million. This year, the Raiders' profits in Oakland would be substantially higher. That the Raiders earned profits of this magnitude is not surprising. For twelve consecutive seasons, the team sold out every home game it played in Northern California -- a record of support virtually unmatched in professional sports. Its total revenues in 1978 and 1979 were squarely within the top 5 NFL clubs. In short, there is no possible argument that the Raiders have been experiencing losses that would "endanger the continued financial viability of the team."

The Raiders earned these revenues and profits while playing in the publicly-financed Oakland-Alameda County Coliseum. This modern facility was specifically constructed for the Raiders and made available in 1966. To support the stadium's construction, AFL Commissioner Joe Foss and the Raiders' management pledged that the team would continue to operate in Oakland so long as it was financially successful. Annual debt service obligations on the facility are approximately $1.5 million and will continue beyond the year 2000. If the Raiders move to Los Angeles, the expense of that stadium will be shifted to city and county taxpayers.

S. 2784 gives concrete substance to congressional policy statements emphasizing the importance of stable team-community ties. At the time of the merger, the Raiders and the other NFL clubs represented to the Congress that "it is contemplated that all present member clubs of both leagues will remain in their present locations, including . . . the Oakland Raiders in Oakland." We went to court in Los Angeles in substantial part to defend that moral commitment and it is entirely appropriate that the Congress now act on it.

In addition, application of the bill to the Oakland suit will not deprive a party of its legitimate expectations. When the Raiders agreed to become a member of the NFL in 1966, they voluntarily signed the merger agreement and contractually committed to remain as the NFL's Oakland operating unit unless and until the League determined otherwise. Until the Los Angeles case, the leading federal court decision in point -- in the _very District_ in which the Raiders sued -- had confirmed the right of a sports league to determine team location. This was also the view of the Department of Justice and leading academic commentators. S. 2784 would simply restore the antitrust laws to where they were before the Raiders' suit.

In summary, both the NFL and the City of Oakland currently face diametrically opposed state and federal court rulings. The certain result is further litigation and extended jockeying of the conflicting community interests. Congress has both the authority and the justification for settling this issue decisively and promptly.

Conclusion

Mr. Chairman, I conclude as I began. By enacting this legislation you reaffirm congressional policies urged on sports leagues for decades and protect the financial and emotional investments made on behalf of sports teams by fans and communities across the country.

You may have heard that this is a personal dispute between the Raiders and myself. In fact, no issue in League history has so firmly unified the other 27 clubs of the League, which unanimously rejected the transfer and have accepted heavy treble damage exposure simply because they believe what the Raiders are doing is wrong -- wrong in terms of the League's reputation, its obligation to Oakland fans, and its past commitments to Congress and the American public. I for one deeply regret that any club in the NFL should sacrifice so much in the way of good will, moral commitment, and fan loyalty for nothing more than an increase in its own profit potential. But such practices can become the order of the day in professional sports if this legislation is not enacted. This is my main concern as I speak to you today.

Once again, Mr. Chairman, I thank you for the opportunity to present my views to this Committee, and I welcome the chance to respond to any questions that you may have.

CONSTITUTION AND BY-LAWS
OF THE
NATIONAL FOOTBALL LEAGUE

Provisions On Membership, Location Of Teams, And League Role In Relocations

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CONSTITUTION AND BY-LAWS
# of the
NATIONAL FOOTBALL LEAGUE

Effective February 1, 1970,
As Amended Through 1981

ARTICLE III
MEMBERSHIP

Members

3.1 (a) Membership in the League shall be limited to the twenty eight (28) member clubs specified in Section 4.4 hereof and such new members as may be thereafter duly elected.

(b) The admission of a new member club, either within or outside the home territory of an existing member club, shall require the affirmative vote of three-fourths of the existing member clubs of the League.

Eligibility of new members

3.2 Any person, association, partnership, corporation, or other entity of good repute organized for the purpose of operating a professional football club shall be eligible for membership except:

(a) No corporation, association, partnership or other entity not operated for profit nor any charitable organization or entity not presently a member of the League shall be eligible for membership.

Admission for members

3.3 (A) Each applicant for membership shall make a written application to the Commissioner. Such application shall describe the type of organization and shall designate the city in which the franchise of the applicant shall be located; such application shall further describe and contain the following information:

(1) The names and addresses of all persons who do or shall own any interest or stock in the applicant, together with a statement that such persons will not own or hold such interest or stock for the benefit of any undisclosed person or organization.

(2) A detailed balance sheet of such company as of the date of organization and a pro forma statement as of the time it shall commence actual operation. A written financial statement shall be required from the applicant and from anyone owning an interest in any applicant, including stockholders and partners.

(3) If applicant is a corporation, a certified copy of the Articles of Incorporation, By-Laws and share certificate shall accompany such application provided, however, if the organization of such corporation has not been commenced or completed a detailed statement summarizing the proposed plan of operation and the capital structure thereof shall be furnished.

(4) If applicant is a partnership, unincorporated association or other entity, a certified copy of the Articles of Co-Partnership or organization agreement shall accompany such application.

(5) The names and addresses of all officers and directors.

(6) All applications shall contain a representation that upon acceptance, the applicant

will subscribe to and agree to be bound by the Constitution, By-Laws, Rules and Regulations of the League and any amendments or modifications thereof.

(B) Each application for membership shall be accompanied by a certified check for Twenty-Five Thousand Dollars ($25,000.00). Upon approval of any application for membership, an additional Twenty-Five Thousand Dollars ($25,000.00) shall be paid to the League. If any application for admission is rejected, the League shall repay to the applicant the sum of Twenty-Five Thousand Dollars ($25,000.00) paid by the applicant at the time of such application, less all expenses reasonably incurred in connection with the consideration and investigation of such application.

(C) Upon receipt of any application for membership in the League, the Commissioner shall conduct such investigation thereof as he deems appropriate. Following the completion of such investigation, the Commissioner shall submit the application to the members for approval together with his recommendation thereon, and such information thereon that the Commissioner deems pertinent. Each proposed owner or holder of any interest in a membership, including stockholders in any corporation, members of a partnership and all other persons holding any interest in the applicant must be individually approved by the affirmative vote of not less than three-fourths or 20, whichever is greater, of the members of the League.

Franchise certificate of membership

3.4 Each member shall receive a Franchise Certificate of Membership signed by the Commissioner, and Secretary of the League, certifying that such member is a member of the League, and holds a franchise from the League to operate a professional football club in a designated city. Such Franchise Certificate shall not be assignable nor transferable, except as provided in Section 3.5 hereof.

Transfer of membership

3.5 No membership, or any interest therein, may be sold, assigned, or otherwise transferred in whole or in part except in accordance with and subject to the following provisions:

(a) Application for the sale, transfer or assignment of a membership or of any interest therein, must be made in writing to the Commissioner; upon receipt of such application, the Commissioner is empowered to require from applicant and applicant shall furnish such information as the Commissioner deems appropriate, including:

(1) The names and addresses of each of the buyers, transferees or assignees thereof.

(2) The price to be paid for such sale, transfer or assignment, and the terms of payment, including a description of the security for any unpaid balance, if any.

(3) A banking reference for each buyer, transferee, or assignee.

(4) If the buyer, transferee or assignee is a corporation, a copy of the Articles of Incorporation and By-Laws thereof, together with a copy of the share certificates of each class of stock to be outstanding, the names and addresses of the directors and officers thereof, the names and addresses of the stockholders therein and the price paid or to be paid and the time of payment for said stock, a copy of any proposed voting trust agreement and of any voting trust certificates.

(b) Upon receipt thereof, the Commissioner shall conduct such investigation as he deems appropriate. Upon the completion thereof, the Commissioner shall submit the proposed transfer to the members for approval, together with his recommendation thereon, and all information in respect thereto that the Commissioner deems pertinent. All sales, transfers or assignments except a transfer referred to in Section 3.5(c) hereof, shall only become effective if approved by the affirmative vote of not less than three-fourths or 20, whichever is greater, of the members of the League.

(c) If any person owning or holding a membership, or an interest therein, by stock ownership or otherwise dies, such membership or interest therein may be transferred to a member of the "immediate family" of the deceased without requiring the consent or approval of the members of the League or the Commissioner thereof; similarly, if any person owning or holding a membership or an interest therein, by stock ownership, or otherwise, seeks to transfer such membership or any interest therein, by gift, such membership or the interest therein may be transferred to the donee if the donee is member of the "immediate family" of the donor; in such event, no consent to or approval of the members of the League or the Commissioner shall be required to complete such transfer. The "immediate family," for the purpose of this paragraph shall mean the wife, child, mother, father, brothers and sisters, or any other lineal descendant of the deceased or donor. In all other cases involving death or transfers by gift, any person succeeding to a membership or an interest therein, whether by gift, will, intestacy, or otherwise, must be first investigated by the Commissioner in such manner as the Commissioner deems appropriate. Upon the completion thereof, the Commissioner shall submit such succession or transfer to the membership for approval and shall accompany the same with his recommendation thereon; no such succession or transfer shall be effective unless first approved by the affirmative vote of not less than three-fourths or 20, whichever is greater, of the members of the League.

Voluntary withdrawal

3.6 Any member of the League may withdraw from membership either:

(a) By selling, assigning, or transferring its membership upon the terms and conditions set out in Section 3.5 hereof; or

(b) A Club may voluntarily withdraw from the League by tendering its written resignation to the Commissioner and simultaneously surrendering its Franchise Certificate of Membership, making full payment of any and all dues, assessments, or other debts owing to the League, and assigning to the League, or its nominee, all player contracts and the lease of its playing field, if and to the extent the lease is assignable; provided, however, that no voluntary withdrawal may be made in any year between March 1st and the date of the World Championship Game of that year, except with the unanimous consent of all members.

Involuntary termination

3.7 Membership in the League shall be automatically terminated whenever:

(a) An individual or corporate member or a partnership member or any general partner therein, makes an assignment for the benefit of his or its creditors or files a voluntary petition in bankruptcy, or whenever a receiver or trustee in bankruptcy is appointed for the property and assets of the member or of any general partner of a partnership member or whenever reorganization proceedings in bankruptcy are instituted by or against the member or by or against any general partner possessing an interest in a partnership membership. In the event the partnership agreement of a partnership member provides for automatic termination of the interest of any general partner who makes an assignment for the benefit of his creditors or who becomes the subject of any such bankruptcy proceedings and also provides for the continuation of such partnership in any such event, and the remaining partners satisfy the requirements of Section 3.5(a) and (b) hereof, then this Section 3.7(a) shall be inoperative with respect to such partnership member.

(b) A member disbands its team during the regular season, or

(c) A member permanently disbands its business organization or ceases its business.

Effect of termination

3.8 (A) Upon the expulsion of a member or upon any other involuntary termintion of membership, the following shall occur:

(1) The lease of its playing field or interest of the member therein if and to the extent the lease or interest is assignable, shall, upon demand of the League, be assigned to the League or its nominee, provided, however, that the assignment of said lease to the League shall first be approved by the affirmative vote or written consent of no less than three-fourths or 20, whichever is greater, of the members of the League, said lease shall therefore be handled or disposed of in such manner as the remaining League members, by the affirmative vote of no less than three-fourths or 20, whichever is greater, of the members, shall decide.

(2) Title to all players contracts of the terminated member and title to all players on the Reserve or Selection List of such terminated member and any interest or right to such players and contracts shall, if demanded by the League, be assigned to the League or its nominee, provided that such assignments are first approved by the affirmative vote or written consent of not less than three-fourths or 20, whichever is greater, of the remaining League members, said players and contracts so acquired shall thereafter be handled and disposed of within the League in such manner as the remaining member clubs by the affirmative vote of not less than three-fourths or 20, whichever is greater, members of the League shall decide.

(3) All interest of the terminated member in and to any funds or property of the League, or any right or interest therein, shall cease.

(B) Whenever any stockholder, partner or holder of an interest in a member club is requested to sell or dispose of his stock or an interest in a membership in the League by reason of an expulsion or other involuntary termination, such sale or disposition must be completed within one hundred twenty (120) days after such action has been ordered. If such stock or interest is not sold or disposed of within one hundred twenty (120) days then the price and other terms of the sale or disposition shall be fixed by mutual agreement between the person affected and the Commissioner; if such cannot be accomplished by mutual agreement, then the price and other terms shall be fixed by arbitration with one arbitrator to be selected by the Commissioner and the other by the affected holder of the stock or interest. If within five (5) days the two arbitrators cannot agree on the price and terms, then the two arbitrators shall select a third arbitrator and the decision of the majority of the arbitrators shall be binding on all parties. If any person required to name an arbitrator fails to do so, or if the two arbitrators cannot agree on a third arbitrator, then such arbitrator in either case shall be named by the Commissioner.

Capital contribution of transferee

3.9 A new member acquiring its membership by transfer from another member shall succeed to the interest of the transferor in and to the funds, property, rights and interests of the League and shall not be obligated to make the capital contribution required under Section 3.3(B) hereof.

Membership fees and assessments

3.10 Assessment. Whenever moneys are required to meet the expenses of the League, and League funds are not available for that purpose, then, upon demand by the Commissioner, each member shall be obligated to contribute equally its share of the required moneys.

Membership covenants and obligations

3.11 Each member club, and each and all of the owners, officers, stockholders, directors or partners therein, as well as any other person, owning any interest in such member club, assumes and agrees to be bound by the following obligations of membership in the League:

(a) They, and each of them, shall be bound by and will observe all decisions of the Commissioner of the League in all matters within his jurisdiction.

(b) They, and each of them, shall be bound by and will observe all decisions, rulings and action of the Executive Committee or the member clubs of the League in every matter within the jurisdiction of such Committee or such member clubs, as the case may be.

(c) They, and each of them, waive any and all claims or demands, whether for damages or otherwise, which they, or any of them, might now or hereafter possess against the Commissioner of the League, individually or in his official capacity, as well as against the League or any employee thereof, and against any member club or any officer, director, owner, stockholder, or partner thereof, or the holder of any interest therein, in connection with or by reason of any decision, ruling action of the Commissioner, the Executive Committee, or the League in reference to any matter within their respective jurisdictions.

(d) They, and each of them, shall include in every contract between any member club and its employees, including coaches and players, a clause wherein the parties to such contract agree to be bound by the Constitution and By-Laws of the League.

(e) That after becoming a member of the League, the primary purpose of the corporation, partnership or other entity operating the club shall at all times be and remain the operation of a professional football team as a member club of the League, and such primary purpose shall not be changed.

(f) They, and each of them, consent to be bound by the provisions of the Final Judgment of the United States District Court for the Eastern District of Pennsylvania entered against the National Football League and certain of its member clubs on December 28, 1953, and as thereafter modified and for the purpose of said Judgment submit to the jurisdiction of said Court.

(g) They, and each of them, agree to be bound by all of the terms and provisions of the Constitution and By-Laws of the League as now or hereafter in effect.

(h) They, and each of them, agree to be represented at each and every meeting of the League and of the Executive Committee of the League by a representative duly authorized and empowered to cast the binding vote of the member club on all questions coming before such meeting.

ARTICLE IV

TERRITORIAL RIGHTS

Home territory defined

4.1 "Home Territory" with respect to any club means the city in which such club is located and for which it holds a franchise and plays its home games, and includes the surrounding territory to the extent of 75 miles in every direction from the exterior corporate limits of such city, except as follows:

(a) Whenever two member clubs, other than the San Francisco 49ers and the Oakland Raiders are located and hold franchises for different cities within 100 miles of each other measured from the exterior corporate limits of such city, then the territorial rights of each of such clubs shall only extend to and include an area of one-half the distance between such cities.

(b) The "home territory" of the Green Bay Packers shall extend and include all of Milwaukee County, Wisconsin, despite the fact that portions of such County are outside the 75 mile limits from the exterior corporate limits of the City of Green Bay.

Rights within home territory

4.2 Each member shall have the exclusive right within its home territory to exhibit professional football games played by teams of the League except that:

(a) Whenever two club franchises in the League are located in the same city, then the owners of each of such franchises shall have equal rights within the home territory of such city.

(b) In respect to the San Francisco and Oakland franchises the following provisions shall apply:

(i) The home club in each city shall have the exclusive right to exhibit professional football games played by teams in the League in its city, and neither the San Francisco nor the Oakland club shall have any right to play professional football in the city of the other without the consent of the other club.

(ii) In respect to the area included in the home territory of both clubs, but located outside the city limits of both cities, both clubs shall have joint rights of exclusivity, and both of said clubs may play games with other clubs in the League within such area without the consent of the other club also operating in the same home territory or any part thereof.

(c) Subject to the provisions of Sections 4.2(a) and (b) above, no club in the League shall be permitted to play games within the home territory of any other club unless a home club is a participant.

League control of games

4.3 The League shall have exclusive control of the exhibition of football games by member clubs within the home territory of each member. No member club shall have the right to transfer its franchise or playing site to a different city, either within or outside its home territory, without prior approval by the affirmative vote of three-fourths of the existing member clubs of the League.

Conference alignment

4.4 The League shall be divided into two conferences called the National Football Conference and the American Football Conference respectively; each conference shall consist of fourteen (14) clubs in the League as follows:

NATIONAL FOOTBALL CONFERENCE	AMERICAN FOOTBALL CONFERENCE
Atlanta Falcons	Baltimore Colts
Chicago Bears	Buffalo Bills
Dallas Cowboys	Cincinnati Bengals
Detroit Lions	Cleveland Browns
Green Bay Packers	Denver Broncos
Los Angeles Rams	Houston Oilers
Minnesota Vikings	Kansas City Chiefs
New Orleans Saints	Miami Dolphins
New York Giants	New England Patriots
Philadelphia Eagles	New York Jets
St. Louis Cardinals	Oakland Raiders
San Francisco 49ers	Pittsburgh Steelers
Seattle Seahawks	San Diego Chargers
Washington Redskins	Tampa Bay Buccaneers

Such conferences shall be operated under the following terms and conditions:

a] Each Conference shall be divided into three (3) divisions, consisting of two divisions of five (5) clubs each, and one division of four (4) clubs;

b] The divisions of the clubs in the American Football Conference are as follows:

CENTRAL DIVISION
Cincinnati Bengals
Cleveland Browns
Houston Oilers
Pittsburgh Steelers

WESTERN DIVISION:
Denver Broncos
Kansas City Chiefs
Oakland Raiders
San Diego Chargers
Tampa Bay Buccaneers

EASTERN DIVISION:
Baltimore Colts
Buffalo Bills
Miami Dolphins
New England Patriots
New York Jets

c] The divisions of the clubs in the National Football Conference are as follows:

CENTRAL DIVISION:
Chicago Bears
Detroit Lions
Green Bay Packers
Minnesota Vikings

WESTERN DIVISION:
Atlanta Falcons
Los Angeles Rams
New Orleans Saints
San Francisco 49ers
Seattle Seahawks

EASTERN DIVISION:
Dallas Cowboys
New York Giants
Philadelphia Eagles
St. Louis Cardinals
Washington Redskins

d] The scheduling of games within each conference and between the two conferences shall be governed by the provisions of Article XIII hereof.

e] The New York Giants and the New York Jets shall not be assigned to the same conference without the consent of both clubs.

f] The San Francisco 49ers and the Oakland Raiders shall not be assigned to the same conference without the prior consent of both clubs unless the conferences are divided into smaller numerical groupings, i.e., divisions; in such case, the 49ers and the Raiders may be assigned to the same conference, but may not be placed in the same division or other smallest numerical grouping of clubs within the same conference.

g] Following the initial realignment of the League taking place after 1969, any other realignment of the League must be approved by the affirmative vote of not less than thirteen (13) of the clubs which were members of the National Football League in 1967, and by the affirmative vote of not less than 8 of the 10 clubs which were members of the American Football League in 1968.

h] Subject to the other provisions of this Section 4.4, whenever the League proposes or seeks to realign the clubs into conferences or other groups for scheduling or standing purposes, the following factors shall be considered in order not to unfairly prejudice the rights of any club in the League, namely, geographical location, natural rivalries, stadium capacity, gate attendance, weather conditions, relative team strength, and baseball conflicts involving clubs playing home games in baseball stadiums.

[Whereupon, at 1:31 p.m., the committee reconvened, Hon. Arlen Specter presiding.]

Senator SPECTER. The hour of 1:30 having arrived, we will reconvene these hearings.

We welcome to the witness table Mr. Gene Upshaw, president of the National Football League Players Association; Mr. Edward R. Garvey, executive director of the National Football League Players Association; and Ben Zelenko, counsel for the National Football League Players Association.

Mr. Upshaw and Mr. Garvey, will you rise while I administer the oath, please?

Mr. Zelenko, you do not intend to testify, do you?

Mr. ZELENKO. No, sir.

Senator SPECTER. Do you solemnly swear that the testimony you shall give before this Committee on the Judiciary of the U.S. Senate shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. GARVEY. I do.

Mr. UPSHAW. I do.

Senator SPECTER. Please be seated, gentlemen. We welcome you here. We appreciate your presence and we very much look forward to your testimony. Mr. Garvey, would you like to begin?

STATEMENT OF A PANEL CONSISTING OF EDWARD R. GARVEY, EXECUTIVE DIRECTOR, NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION AND GENE UPSHAW, PRESIDENT, NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION, ACCOMPANIED BY BENJAMIN L. ZELENKO, COUNSEL

Mr. GARVEY. Thank you, Senator. With your permission, rather than reading our statement, although I am a very good reader, if you would allow us to submit it for the record, we will make some direct comments on what we have heard this morning.

Senator SPECTER. Yes; your statement—whatever written statement you choose—will be incorporated for the record in full.

We have not used any lights today. It is the practice of the committee customarily to do so, with 5 minutes being allocated on the green and when the yellow goes it is 1 minute, and the red is over.

Frequently, those of us on this side of the table are more in violation of brevity than those on your side of the table. But we are going to use them this afternoon because we do have seven witnesses and we know everybody else has a great many commitments to go to.

Mr. GARVEY. All right, Senator. It is a little difficult to sum up what we heard this morning or to try to focus on the bill as was presented by Senator DeConcini or your bill. We are going to do our best to try to point out the major issues as we see them, and then hopefully we will be able to answer your questions.

I note that at the beginning, Senator DeConcini was concerned about the opposition concerns about pressure, and I think really all we would like to do is read what Mr. Rozelle said last week. He said:

> We have franchise applications from Jacksonville, Indianapolis, Birmingham, Phoenix, Memphis, San Antonio and many other cities. I told them what I tell everyone: no exemption, no expansion.

I guess it is fair to say that we would not envy a Senator from the States that are considering expansion, or at least hoping to have an expansion NFL team in their particular States. There is enormous pressure on them to try to accommodate the NFL so that the NFL will indeed expand.

But in a real sense, I think what the NFL is saying to the Congress is what each team says to its city: "Unless you do certain things, we will move or we will do something else." For example, I see that the mayor of San Francisco will testify, and she endorsed the bill that Congressman Stark had introduced. And at the same time, the 49'ers and the San Francisco Giants are indicating that the city of San Francisco must build a domed stadium.

Really, what happens in that kind of a situation is that the city feels the enormous pressure of the possibility of losing a team unless it complies with what the NFL wants. And it seems to us that the question really is—and the only person who has focused on it thus far is yourself in the bill that you introduced—and that is a bill that will actually do what the NFL says it wants, and that is to protect the communities?

You have to set standards, and if you do not set standards, all you have to go on is what Pete Rozelle essentially said this morning; that is, "Trust us." Well, if we go back to the 1966 merger hearings, he said that the teams would stay in the same stadium locations in the same cities that they were in at the time of the merger. They also said they wanted nothing more than the exemption for the merger itself.

Yet, when we brought the *Mackey* case, we heard from Covington and Burling in court that when Congress exempted the merger, surely it must have exempted the Rozelle rule and other player restrictions.

So, I think a carefully drawn bill that would protect the cities is what everyone here is looking for.

Now, to listen to what was said this morning, I guess, is a little tough for us because we all want to have our day in court, so to speak. But the thought expressed by the league, I guess, is that if you simply give an antitrust exemption, somehow or other the monopoly will be more responsible.

I happened to have grown up near Milwaukee and watched the Milwaukee Braves move to Atlanta for a more lucrative television contract. Baseball is exempt from the antitrust laws, so apparently the exemption did not make them any more responsible, nor did it make the Brooklyn Dodgers or the New York Giants any more responsible when they moved, or the teams from St. Louis and Boston and Philadelphia and Seattle that lost teams.

So, to just trust the monopoly I think is folly. In football itself, Mr. Rozelle talks about the romance between the fans of Oakland and the Oakland Raiders. Yet, he failed to mention the romance with the Los Angeles Rams and what happened to the city there when it lost its team to Anaheim because the city of Anaheim essentially outbid the city of Los Angeles for that team.

So, if we look at baseball that is exempt, we see that teams have moved at will. If we look at football, we see the Rams moved to Anaheim, the Giants moved to New Jersey, Detroit moved to Pontiac, Buffalo moved to Orchard Park, Dallas moved to Irving, and so on.

But equally important, I think anyone who is looking at this objectively would have to take a look at the Minnesota Vikings' threat to move to Phoenix or Memphis or to other cities unless they built a domed stadium. The Dolphins threatened to move to Los Angeles, and the Colts to New York and Los Angeles and Jacksonville.

So, the real problem here is how do you protect the city? As far as the revenue sharing is concerned, there seems to be an underlying assumption that revenue sharing is good. And yet I do not know anyone who has put forward anything other than to say, "We are enormously successful, so trust us again with our pooling exemption."

We suggested to the House Committee on the Judiciary that it was time to take a long, hard look at revenue sharing, because it has hurt the player market pool and we do not see that it has helped competition. More importantly, it has given the NFL enormous power to make sure that other leagues could not form, and it allows them to decide when and where to expand.

There should be other teams in Los Angeles, Chicago, Philadelphia, and New York, but the NFL is able to stop that expansion simply because they have been given the opportunity and the power to share all their revenues equally.

I take it the red light means I should——

Senator SPECTER. Well, we have some latitude and leeway.

Mr. GARVEY. All right.

Senator SPECTER. Mr. Garvey, you may proceed.

Mr. GARVEY. We also hear—and I am sure that Gene Upshaw will speak to this—that somehow or other the Commissioner of the National Football League is now a labor expert and they are very concerned to make sure that this bill does not in any way impact adversely on the players.

Anyone who looks at the antitrust laws and the history of sports litigation could not reach that conclusion, and they know that that is not the conclusion that they want to reach. If the Congress declares that this is a joint venture, then by really force of law, they will be able to successfully argue their way out of section 1 of the Sherman Act. They tried it in the *Mackey* case, they tried it in the *Kapp* case, they tried it in the *Los Angeles Coliseum* case. They have tried it every time they have had a case come before a court—also in the *Yazoo Smith* case, as Mr. Zelenko points out, here in Washington.

The courts have said, "Follow a rule of reason; come up with something less restrictive; negotiate with the union, and you have no problems." And, indeed, that is what has happened. Yet, if this bill passes, they know perfectly well that then they have an incentive not to reach agreement with the union, but to continue what they have been trying to do for years, and that is not to have a union at all.

And if you pass this legislation, essentially declaring them a joint venture, it is our concern that no player would ever be able to resort to the courts again to prevent them from unreasonable restrictions on movement, the draft, and the like.

So, we would urge, Senator Specter, that people focus on the real issue, and that is the protection of the cities. Second, I was tempted to begin by saying, after listening to the commissioner, welcome to the hearings on pay cable television, and that is our concern about revenue sharing.

Revenue sharing came up at our convention in Albuquerque, N. Mex., and while the players are asking for a percentage of gross, they debated at some length the issue of ticket prices and pay cable. And I am proud to say that the players voted to ask management to roll back the ticket price increases, based on the enormous television revenues that they are going to get under their new network contract—some $2 billion.

Second, they said that they fear pay cable television because this will make the game accessible only to the economic elite, and that those youngsters who are now looking at games on television and who wish to play it at some point may be denied the opportunity to do so.

I have to admit that at some point this union will be asking for some of those revenues, and I suspect that some would say, well, how can the union be sitting here opposed to revenue sharing if, indeed, at some point it may make more money for the players? And I submit it is because we are very concerned that the greed that we have seen in other sports and to some extent in this sport will drive an awful lot of people away from the game as we proceed.

So, we think the bill should have a full airing and should not, as Mr. Rozelle suggested, be brought through the antitrust laws on Al Davis' case, because what he was saying as we listened to him was, "We need this exemption for pay cable television in case somebody like Al Davis tries to put games on television."

We think that the NFL has failed to be forthright in its position here. Its position is it wants an exemption for pay cable, and its position is that it will not impact on labor. I do not care how many times they say it will not impact on the union. It will impact on the individual rights of individuals who would go to court to test their regulations and rules.

[The prepared statement of Edward Garvey and attachments follow:]

PREPARED STATEMENT OF EDWARD R. GARVEY

Mr. Chairman, Members of the Committee:

My name is Ed Garvey. I am the Executive Director of the National Football League Players Association, and I have served in that capacity for the past eleven years. I am accompanied by Gene Upshaw, President of NFLPA, an offensive lineman with the Los Angeles Raiders. Mr. Upshaw flew here directly after the L.A. Raiders versus San Francisco 49ers game to offer testimony to the Committee this morning.

On behalf of approximately 1500 professional football players in the NFL whom we represent, we thank the Committee for its invitation to appear today and to express our views on bills introduced within the past three weeks, S. 2784 introduced by Senator DeConcini and S. 2821 introduced by Senator Specter. The bill, S. 2784, the so-called Major League Sports Community Protection Act, represents the latest attempt in a 25 year history of legislative efforts by the NFL to obtain immunity from the antitrust laws. The process goes back to 1957 when the Supreme Court first held that professional football was subject to antitrust scrunity. In its most recent Legislative Alert, COPE and the AFL-CIO urged Members to oppose S. 2784 and its companion bill in the House, H.R. 6467. We join in that opposition.

Instead of devoting its time and energy to good-faith collective bargaining to avert a shut down of professional football this year, the League has devoted its considerable resources over the past seven months to trying to win blanket antitrust immunity from the Congress. Its efforts have apparently involved all manner and form of inducement and persuasion including the promise of new franchises.

Equally important, the NFL and its army of lobbyists, have told Members that the League will not expand unless and until the NFL receives antitrust immunity. Read Mr. Rozelle's quotes in the Los Angeles Times, August 12, 1982:

> "We have franchise applications from Jacksonville, Indianapolis, Birmingham, Phoenix, Memphis, San Antonio, and many other cities. I've told them what I tell everyone. No exemption, no expansion."

I do not envy a Senator or Congressman from Arizona, Indiana, Alabama, Tennessee, Florida or Texas who is faced with the NFL's ultimatum. If this bill is not enacted, or if one like Senator Specter's bill fails to get Pete Rozelle's seal of approval, the Member will be blamed for not having an NFL team in his state. In effect, Mr. Rozelle is doing to Congress what individual club owners do to the cities. "Build us a domed stadium San Francisco, Minneapolis, Detroit or we will move." "Do what we want or we will take our ball and go home," seems to sum up the attitude of the sports monopolists. The objective has been the enactment of what amounts to private relief legislation for the benefit of the team owners at the expense of fans, communities and the players. The NFLPA opposes these efforts and the NFL-sponsored legislation.

The NFLPA is an NLRB certified union acting as the exclusive bargaining agent for all professional football players on twenty-eight NFL teams. The NFLPA also organized athletes in the North American Soccer League and in the Major Indoor Soccer League. The three unions are all affiliated with the AFL-CIO. Just achieving recognition in football and soccer was a long and difficult struggle, and our efforts at bargaining have not only been frustrating but also have required continuing resort to NLRB procedures to overcome unfair labor practices. We have supported successful lawsuits to protect and vindicate the rights of our members under the antitrust laws including Mackey v. NFL and Alexander v. NFL. But these efforts have been extraordinarily time-consuming and costly. The NFL has very deep pockets and it shares legal costs equally among the twenty-eight members. An extraordinarily costly lawsuit to the Union is an insubstantial tax write-off to a member of the NFL. In view of the brief average career of a professional football player, approximately 4 1/2 years, such protracted and expensive litigation is difficult to institute and may well result in inadequate relief. In this industry, therefore, there is a serious question whether private litigation can be expected to adequately enforce the antitrust laws. Personally, I do not believe that private litigation is the answer.

Collective bargaining with a powerful monopoly such as the National Football League, does not necessarily promise protection for the athlete-employee. At the bargaining table, the NFLPA has negotiated with the NFL over a variety of traditional issues such as minimum salaries, squad size, injury and non-injury grievance procedures, safety, pension, insurance and other fringe benefits as well as working conditions. Because of the monopoly market for professional football players, there are a number of unusual structural terms and conditions of employment, including commissioner discipline, the compensation or reserve system, the standard player contract, the college draft, to mention only a few. The NFL has always maintained that these rules and regulations, adopted by management, remain in full force and effect, union or no union, collective bargaining agreement or no collective bargaining agreement. While we dispute their assertion, absent a collective bargaining agreement, athletes are forced to accept their working conditions determined by twenty-eight NFL owners and their commissioner, or resort to the courts for relief. The restrictive provisions that limit player mobility are set forth in the NFL Constitution and By-laws, a document which is not given out to players or their representatives.

Our current collective bargaining agreement terminated on July 15, 1982. We had hoped to commence negotiations on a new agreement in the fall of 1981 but the NFL informed us that they were in no hurry. Instead of bargaining the League decided that its first priority was enactment of antitrust immunity. This illustrates as forcefully as anything I know why we have made no progress at the collective bargaining table.

Mr. Chairman, my written statement focuses on four areas: (1) the need for oversight of the operations of sports monopolies, particularly in view of the growth of cross-ownership of sports franchises; (2) the absence of any justification for requiring extraordinary majorities of club owners to approve collective bargaining agreements, franchise expansion or franchise movement; (3) the future of sports programming over cable systems; (4) the impact of antitrust exemptions granted the NFL in 1961 and 1966 on player mobility within the NFL and its effect on potential competitors. In the course of the statement, I will comment briefly on S. 2784 and S. 2821 which are before the Committee. I will, of course, be pleased to comment and answer questions on any other matter that the Committee members care to raise.

Organized professional team sports is big business today. Although individual NFL clubs do not qualify as members of the Fortune "500", the NFL as an aggregate -- which the League likes to represent itself as -- may well qualify in that exclusive grouping. In 1980, total gross revenues are estimated in excess of 400 million dollars. The new 5 year NFL network TV package of 2.1 billion dollars guarantees each team an average of 14 million dollars each year. That means that all teams will collect almost 400 million dollars from network TV alone in 1982. If we were to lump together all of the major sports leagues including the NFL, Major League Baseball, the NBA, the NHL, the MISL, and the NASL, the professional teams sports industry clearly ranks among the major businesses in America today. And with anticipated expansion of cable and subscription television revenues, sports business will be a lot bigger in the 1980's and '90's. Moreover, the policies and practices of these businesses are highly visible and of immediate interest and concern to millions of Americans who support professional sports, and to the communities in which they operate.

Not only is sports big business, it has always enjoyed and used monopoly powers to control player wages and mobility. The Sports Broadcasting Act of 1961 gave to the National Football League enormous powers to control or at least significantly influence selection of announcers and control over what they say on the air. The merger exemption legislation of 1966 confirmed "special status" onto the NFL. These acts of Congress conferred tremendous economic power to sports leagues in dealing with broadcast networks and stations, municipal governments, stadium authorities and athlete - employees. Indeed, the financial and political leverage these acts conveyed is virtually unparalleled in American history. With these powers, sports cartels engage in anticompetive restraints to restrict a player's choice of employer and job mobility throughout his career; they limit expansion and/or sale of franchises; they establish exclusive territories and curtail off-field competition. And yet, despite its size and government granted powers, information about the economics of professional sports is extremely limited. We probably know more about the Soviet economy than we do about the NFL's finances. Data on the profitability of professional sports teams historically has been as secretly guarded as key national security files. Only when clubs allege losses or find it convenient in court or administrative proceedings, are any figures furnished. But even then, the NFL normally provides only meaningless averages.

Past NFL representations to Congress concerning antitrust immunity

Mr. Chairman, it is instructive to review for the Committee prior League representations to Congress as to effects of antitrust immunity which it sought.

A review of these statements suggest another dimension to the dangers inherent in granting millionaire sports owners additional exemptions from the law. For example, in 1966 when the AFL-NFL merger exemption bill was being considered the NFL made a number of representations and promises to the Congress. The NFL spokesman stated

> "Every franchise of both leagues will remain in its present location.
>
> * * *
>
> 1. Professional football operations will be preserved in the 23 cities and 25 stadiums where such operations are presently being conducted."

"Professional Football League Merger", Hearings before Antitrust Subcommittee, Committee on the Judiciary, U.S. House of Representatives, 89th Cong. 2 Sess. (1966) at 33.

What in fact has occured since 1966?

- The New York Giants moved to the Meadowlands, New Jersey
- The Dallas Cowboys moved to Irving, Texas
- The Detroit Lions moved to Pontiac, Michigan
- The Los Angeles Rams moved to Annaheim, California

These moves occured despite NFL assurances and without antitrust immunity. What standards governed the League's action? What is the basis for confering unrestricted and unreviewable authority to team owners for the future? The record of other sports is no more encouraging.

Second, in 1966 when the League was asked whether the merger exemption would place beyond antitrust scrutiny NFL practices such as the reserve system, the standard player contract, the player draft, the powers of the Commissioner, etc., the League emphatically replied:

> " We ask no immunity for anything that the league does as a single league."

Hearings at 77.

Repeatedly, League representatives assured the House Antitrust Subcommittee and the Congress that all it sought was a "narrow" limited exemption. In fact, the Senate Committee Report expressly stated that the merger exemption bill "would not extend to the combined league any greater antitrust immunity then that now exists for the existing professional football teams." The claims in 1966 resemble the claims being made today.

But what happened?

When the Rozell Rule was challenged in Federal Court the League defended in part by claiming that the merger exemption enacted by the Congress had immunized the compensation system. Nevertheless, the players were able to prevail. Fortunately they were able to overcome the League's representations to the court which were diametrically opposite to those made to Congress. But the law suit was expensive, arduous and time-consuming. The expense of that litigation nearly broke the Players Association. The clear lesson is not to grant further immunity to the sports cartel.

Pending legislation: S. 2784 and S. 2821

Sponsors of S. 2784 claim the bill restores "due process and predictability" to team relocations and that it "clarifies" the law. The beneficiaries of the legislation are supposed to be the communities and fans that support major league sports.

Nonsense. The bill extends additional antitrust immunity to sports team owners and their leagues. The legislation overrules an antitrust decision still before the courts and confers unrestricted, unreviewable powers to the sports monopolies. It is our understanding that the recent decision in the Los Angeles Coliseum case outlawed unreasonable league controls on team relocation; it did not outlaw reasonable league controls. The court went to some lengths to encourage the League to amend its rules to provide for a less restrictive voting requirement. The League refused to modify its voting process. Although the matter is still before the courts, S. 2784 would reverse the ruling and empower team owners to exercise unreviewable controls over team transfers. We do not believe the bill protects fans, communities, or the players.

Past experience with professional team sports on the movement of franchises provides no assurance at all that the sports leagues and the team owners are sensitive to the interests and needs of the communities in which they operate. The transfer of the L.A. Rams to Annaheim is only the most recent example in a long line. Entrusting such decisions to the league without statutory restriction or guideline and placing them beyond antitrust scrutiny jeopardizes rather than promotes the "stability" of communities and franchises. The League argues that other moves are imminent. We know of none. The only imminent matter is a trial on damages in the Los Angeles Coliseum case scheduled for September 20.

The NFL Players Association and its members have a vital interest in the stability of franchises and the economic viability and prosperity of professional football. Our members share many of the same interests and goals held by citizens in the communities in which they play. Players plan for post-football careers in their "home" communities and the stability of a franchise is important in that planning. As a part of organized labor, the NFLPA also shares with the AFL-CIO a commitment to the principle that competition in product and service markets is the best means of assuring that the public interest will be protected. Adding a further antitrust exemption to those already possessed by the NFL and its team owners undermines the principle of free and open competition.

We also oppose provisions of S. 2784 that would immunize the pooling of revenues. This could encourage the sale of championship games to Pay or Subscription TV and remove such games from free network TV. In addition, such immunity will erode players' abilities to negotiate salaries that reflect an athlete's true value. For example, if an owner owns 1/28th of every player in the league there is little incentive for that owner to bid or pay more for a particular athlete's services. In this context, league-wide revenue pooling adversely affects the salary structure of professional athletes. Revenue sharing has contributed to a total lack of player mobility within the National Football League. Any revenue sharing proposal requires the most careful scrutiny and review of detailed financial information from the affected sports leagues, including such basic financial information as current network television contracts, gate receipts, and profits earned from subsidiary monopolies such as NFL Films Inc. and NFL Properties Inc.

In sum, S. 2784 is private special legislation for the sole benefit of the sports entrepreneurs. There is no justification for conferring additional antitrust immunity on the NFL, its member clubs or any other professional sports league.

On the other hand, S. 2821 introduced by Senator Specter one week ago is a more promising and constructive approach. The bill implicitly acknowledges that granting unrestricted, unreviewable powers to sports team owners is inherently mischievous and offers no guarantee that the public interest will be protected. The bill prudently establishes standards or criteria to restrict relocation decisions. In order to be certain that municipal and stadium authorities are not unjustly dealt with or threatened,however, it may be appropriate to tighten and clarify the proposed criteria. We will be pleased to work with the Committee in that regard.

S. 2821 also wisely omits any immunity for revenue sharing or revenue pooling. As we have stated, we believe such an exemption is not in the best interest of the fans or the players.

We note that the bill is designed to regulate transfers from one metropolitan area to another. We suggest the Committee consider an amendment to make S. 2821 applicable to transfers within a metropolitan area if the transfer is to a new community under the jurisdiction of a different government or stadium authority. Past history has shown that a number of team moves have occurred within an SMSA but still adversely affected the "home" city. Such moves deserve attention under the proposed legislation. We would prefer that no further antitrust immunity be granted professional sports. Also we would prefer that extraordinary majorities not control league decision making. We believe that these matters, however, can be addressed within the context of S. 2821.

Extraordinary majorities a related issue is a requirement by sports leagues mandating votes of extraordinary majorities -- generally three-fourths -- to approve expansion transfer or to approve collective bargaining agreements. We suggest that the industry be forced to justify the extraordinary majority vote as the least restrictive available means to protect the industry. Overall, we ask that you undertake a deep and thorough analysis of the present structure of organized team sports, the system which restricts players and their ability to sell their services, imposes artificial scarcities, and which possibly impedes collective bargaining through the imposition of an extraordinary majority vote approve any collective bargaining agreement. Those persons who justify the present system by allegations of financial ruin or internal chaos if changes were to be made, should be asked to supply evidence or other factual data to justify existing anticompetitive practices.

Throughout 1974 - 1977, NFL negotiators explained their inability to agree to any relaxation of the draft, waiver system, Rozelle Rule, option clause and antitampering provisions of the League's Constitution and By-laws, because of the requirement that three-fourths of all owners has to accept a collective bargaining agreement. Time and again, we heard that "Joe Robbie has seven other owners who will never agree to any modification." In other words, a minority of eight NFL owners can thwart the collective bargaining process within this monopoly and if no agreement is reached, then the restrictive practices unilaterally adopted by management would be applied to the employees. The result of this extraordinary majority requirement was three years of conflict.

Mr. Chairman, in addition to the issue of relocation we believe that expansion of sports franchises should be addressed. Expansion clearly serves the interest of the public, particularly those communities whose desire and financial capacities can support new teams, as well as the athletes by expanding the job market. We believe that the standards proposed in H.R. 3287, a bill introduced by Representative John Seiberling, are sound and consistent with antitrust policy goals. We concur in the views expressed by the Department of Justice in its letter of January, 1980 to House Judiciary Committee Chairman Rodino:

> "When a geographic region is capable of supporting more than one franchise, it is not in the public interest to allow the existing team to block entry solely to protect its monopoly profits."

A copy of the Department's letter of January 15, 1980, is attached to this statement and I request that it be inserted in the record. We would add that an extraordinary majority should not be allowed to block entry solely to protect monopoly profits.

Comprehensive Study of Sports Industry.

As I mentioned before, we urge that the Committee request from the leagues and their respective clubs, basic financial data. Since the NFL claims that member clubs only compete on the field and their business operations are a kind of "unitary partnership" or joint venture, there is no need to mask the identity of individual clubs. In any evert, it is not possible to evaluate any claims by the leagues unless they are supported by more than rhetoric or generalizations.

Each sports league is a monopoly -- it has sought and received special favors from the Congress. These exemptions have secured a privileged position for this industry in American business, and, except for occasional private antitrust lawsuits, has permitted these enterprises to operate without answering to any federal authority. It has given each league superior bargaining position with respect to networks, cities, stadium authorities, professional athletes and their unions. In many cases, league operations under commissioner rule resemble a private government.

At the minimum, we suggest that this Committee authorize an in-depth study as to how exemptions for broadcasting and merger have operated. Has the public interest been served? Are communities threatened with franchise removal unless greater concessions are forthcoming? Have consumers paid more for this product as a result of artificially created scarcities? Are restrictions on player entry and movement in the public interest? Is private antitrust litigation the optimal enforcement mechanism? Does the fact that legal costs can be divided twenty-eight ways as in the NFL, and the fact that potential plaintiffs have a short professional career, deter effective enforcement?

What is the ability of communities to retain or acquire a professional sports franchise? Have the sports owner-promoters operated in a responsible manner which entitles them to continued antitrust exemptions? Should the broadcasting exemption be unchanged, repealed or conditioned on certain changes and policies and practices?

We believe that Congress should undertake a comprehensive study of professional sport, not simply because of a baseball strike or because of a football team's efforts to move its franchise. It is needed because the existing monopoly powers of the sports leagues are so substantial that private litigation and collective bargaining cannot be relied upon to eliminate anticompetitive practices. The sports owners can and do pool their reserves. They easily can drain a union of its financial capacity to conduct litigation or negotiations. Just consider the disparity in wealth between the NFLPA and twenty-eight NFL owners or between the Major League Baseball Players and twenty-six baseball owners.

Finally, Mr. Chairman, I must raise with the Committee a growing problem of ownership of teams in two or even three leagues by an individual or a corporation. The attached chart lists the cross-ownership by Lamar Hunt, Jerry Buss, Ted Turner, Gulf & Western, Edward Bennett Williams and others. Clearly developments in baseball are followed closely by owners in football and hockey. Strategies developed in the NHL are known to Abe Pollin who can urge similar or coordinated policies in the NBA. The NASL fought recognition of the union organized in 1977, and two of the members of its labor committee were also NFL owners -- Lamar Hunt and Joe Robbie. Recently, the NFL's labor negotiator announced a meeting of negotiators for baseball, NBA, NASL, NHL and the NFL. That announcement caused considerable comment and eventually the meeting was postponed; nevertheless, even without such a meeting, Oriole President Williams attends baseball owner meetings and later attends NFL owner meetings as President of the Redskins. Obviously, strategies are shared.

Not long ago, Bowie Kuhn, baseball commissioner, testified on cable TV on behalf of the NFL, NHL, NBA and NASL as well as the baseball owners. How did that happen? Did he simply usurp the power, or were there meetings to work out a common policy in the communications area? The answer seems too obvious to ignore. In addition to the area of cross-ownership, we believe that this Committee should also study growing cooperation among the various sports monopolies to work on common strategies, common policies, and common approaches. The interests of the employees and the public should come before those of millionaire sports owners who are now acting as one in many areas.

Thank you, Mr. Chairman.

ATTACHMENT A

ISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

JAN 15 1980

Honorable Peter W. Rodino, Jr.
Chairman
Committee on the Judiciary
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

This is in response to your request for the views of the Department of Justice on H.R. 2129, a bill "To repeal baseball's antitrust exemption, to prohibit certain territorial restrictions, and for other purposes."

The bill would bring professional baseball under the Sherman and Clayton Acts and the Federal Trade Commission Act to the same extent that other professional team sports are now subject to those laws. See, e.g., *Radovich v. National Football League*, 352 U.S. 445 (1957); *Robertson v. National Basketball Association*, 389 F. Supp. 867 (S.D.N.Y. 1975); *Philadelphia World Hockey Club v. Philadelphia Hockey Club*, 351 F. Supp. 462 (E.D. Pa. 1972). Thus, the bill will eliminate the antitrust exemption now enjoyed solely by professional baseball as a result of Supreme Court decisions in *Federal Baseball Club v. National League*, 259 U.S. 200 (1922), *Toolson v. New York Yankees*, 346 U.S. 356 (1953), and *Flood v. Kuhn*, 407 U.S. 258 (1972).

In addition, the bill would prohibit exclusive franchises except in a home territory containing less than two million residents. The bill defines "home territory" as the city, county or other geographic jurisdiction in which the team is located and plays its home games and the area within a radius of seventy-five miles from the boundary or corporate limits of such city, county or jurisdiction. The prohibition of exclusive franchises would apply to the organized professional team sports of baseball, football, basketball, hockey, and soccer.

The elimination of baseball's exemption from antitrust law is long overdue. Even the U.S. Supreme Court, which established the exemption in 1922, has repudiated the reasoning which gave it birth. See

Radovich v. National Football League, 352 U.S. 445, 452 (1957). Resting, however, upon the principle of *stare decisis*, the Court has concluded that Congress should correct any error or discrimination resulting from the unique antitrust immunity afforded professional baseball. In that respect, Chief Justice Burger has stated that "it is time the Congress acted to solve this problem." *Flood v. Kuhn*, 407 U.S. 258, 285 (1972) (concurring opinion).

Certainly, the beneficial coexistence of antitrust law and other professional team sports supports the elimination of baseball's unique exemption. The antitrust laws are sufficiently flexible to comprehend whatever unusual features of the professional sports industry exist. Obviously, the business of professional sports does require a certain amount of interaction between the various teams within a league, interaction and cooperation and indeed agreements which might be considered *per se* illegal in other industries. Accordingly, the courts have generally chosen to subject the challenged practices of the professional sports industry to the rule of reason analysis. See, e.g., *Smith v. Pro Football, Inc.*, 593 F. 2d 1173, 1182 (D.C. Cir. 1979); *Mackey v. NFL*, 543 F. 2d 606, 618 (8th Cir. 1976), *cert. dismissed*, 434 U.S. 801 (1977); *Kapp v. NFL*, 390 F. Supp. 73, 81 (N.D. Cal. 1974), *aff'd in part and appeal dismissed in part as moot*, 586 F. 2d 644 (9th Cir. 1978); *Philadelphia World Hockey Club v. Philadelphia Hockey Club*, 351 F. Supp. 462, 503 (E.D. Pa. 1972).

Under the rule of reason, a restraint is scrutinized to determine whether it is significantly anticompetitive in purpose or effect. In making its analysis, a court generally will be required to consider "the facts peculiar to the business, the history of the restraint, and the reasons why it was imposed." *National Society of Professional Engineers v. United States*, 435 U.S. 679, 692 (1978). If the restraint has a legitimate business purpose whose realization serves to promote competition, the anticompetitive effects of the challenged practice must be carefully balanced against its procompetitive effects to ascertain whether the former outweigh the latter. See *Continental T.V., Inc. v. GTE Sylvania, Inc.*, 433 U.S. 36, 49 (1977); *Chicago Board of Trade v. United States*, 246 U.S. 231, 238 (1918). A restraint is unreasonable only if, on balance, it substantially impedes competition. In order to survive scrutiny under the rule of reason analysis, a practice which has a legitimate business purpose must also constitute the least restrictive means reasonably available to achieve that purpose. See, e.g., *Mackey v. NFL*. 543 F. 2d 606, 620 (8th Cir. 1976), *cert. dismissed*, 434 U.S. 801 (1977). Cf. *Silver v. New York Stock Exchange*, 373 U.S. 341 (1963). Given the availability of the rule of reason analysis, it is clear that the antitrust laws can rationally be applied to the business of professional sports in general and to baseball in particular. It is equally clear that no economic or other persuasive justification for perpetuating baseball's anomolous antitrust exemption has been sustained. See *House Select Comm. On Professional Sports, Inquiry Into Professional Sports*, H.R. Rep. No. 94-1786, 94th Cong., 2d Sess. 47-58 (1977); *Government and the Sports Business* (R. Noll ed. 1974).

The provision of H.R. 2129 which prohibits certain territorial restrictions would have the salutary effect of facilitating the entry of new teams into professional baseball, football, basketball, hockey, and soccer leagues. While the maintenance of the highest quality of play among sports teams and the establishment of a champion among the contenders *may* constitute sufficient justification for the tolerance of sports leagues as monopolies, the exclusive territorial rights currently granted team owners by sports leagues are justified in the interest of league stability only when the entry of a new league team would seriously undermine the financial viability of the existing team. When a geographic region is capable of supporting more than one franchise, it is not in the public interest to allow the existing team to block entry solely to protect its monopoly profits. *Inquiry into Professional Sports, Hearings Before the House Select Comm. on Professional Sports*, 94th Cong., 2d Sess., Part 2, at 164-65 (1976) (prepared statement of Gerald W. Scully). Where a home territory, as defined in H.R. 2129, contains more than two million residents, the potential for beneficial intraleague competition is significant enough to deny the resident team the unilateral right to exclude a new entrant who otherwise meets *reasonable* qualifications established and enforced by the league in which membership is sought. See R. Noll, "Attendance and Price Setting," in *Government and the Sports Business* 146 (R. Noll ed. 1974). It should be noted, however, that H.R. 2129 does not prevent sports leagues from conditioning the entry of new teams into "home territories" containing more than two million residents upon the applicant's demonstration of such criteria as (1) a suitable stadium, (2) a strong financial base, (3) a suitable market for expansion, and (4) a squad of players. In short, the existence of a home territory containing two million or more residents does not oblige the league to grant a second franchise. It merely deprives the established resident of the unilateral right to veto such a grant. This is entirely consistent with the traditional antitrust goal of providing the consumer with as many sources of supply of desired goods and services as is reasonably possible.

For the foregoing reasons, the Department of Justice recommends the enactment of this legislation.

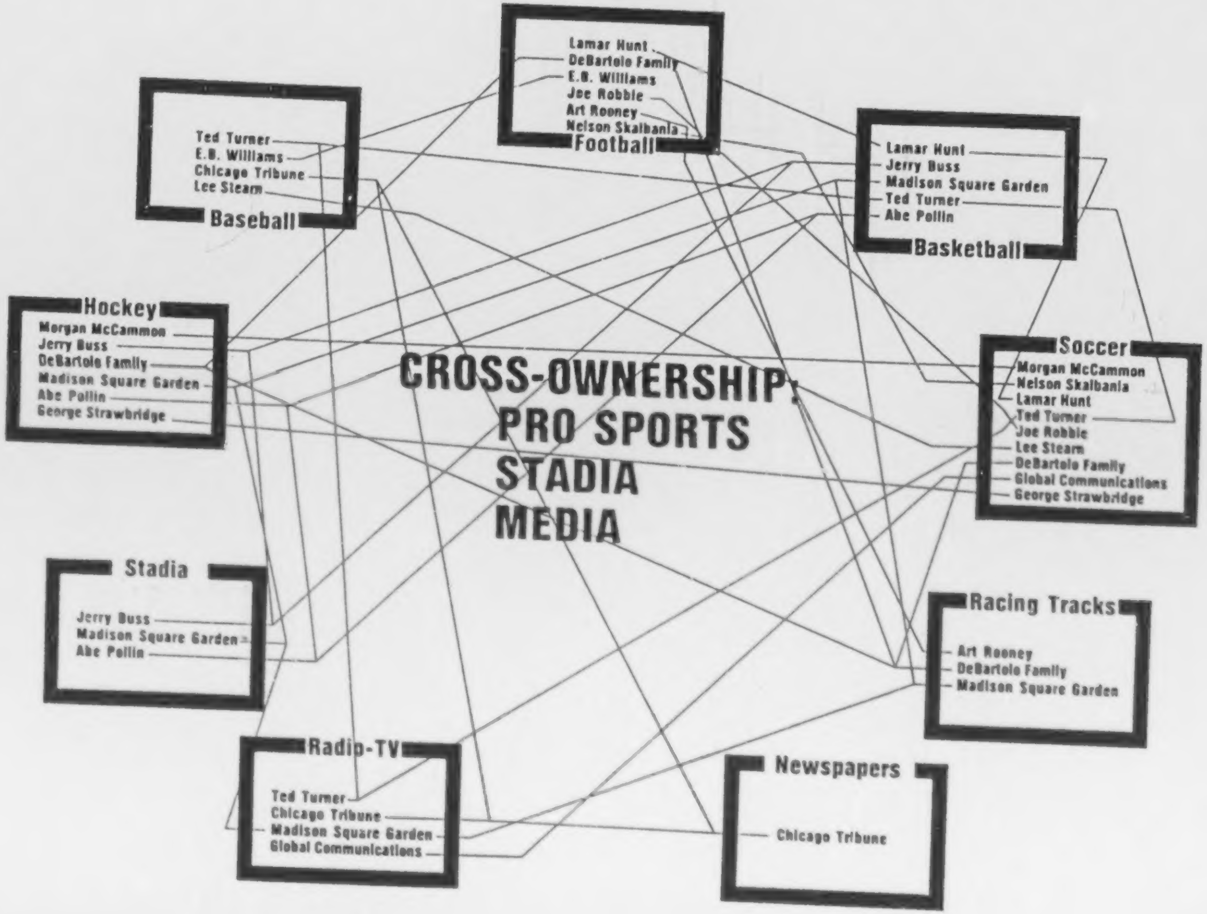
The Office of the Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Alan A. Parker

Alan A. Parker
Assistant Attorney General

ATTACHMENT B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STADIA
MEDIA
Football
Lamar Hunt
DeBartolo Family
E.B. Williams
Joe Robbie
Art Rooney
Nelson Skalbania
Baseball
Ted Turner
E.B. Williams
Chicago Tribune
Lee Stearn
Basketball
Lamar Hunt
Jerry Buss
Madison Square Garden
Ted Turner
Abe Pollin
Hockey
Morgan McCammon
Jerry Buss
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George Strawbridge
Soccer
Morgan McCammon
Nelson Skalbania
Lamar Hunt
Ted Turner
Joe Robbie
Lee Stearn
DeBartolo Family
Global Communications
George Strawbridge
Stadia
Jerry Buss
Madison Square Garden
Abe Pollin
Racing Tracks
Art Rooney
DeBartolo Family
Madison Square Garden
Radio-TV
Ted Turner
Chicago Tribune
Madison Square Garden
Global Communications
Newspapers
Chicago Tribune

ATTACHMENT C

[From the Los Angeles Times, Aug. 12, 1982]

RAIDERS: NFL USING MONEY, FRANCHISES TO SWAY CONGRESS

(By Bob Oates, Times Staff Writer)

The National Football League is conducting a "heavily financed lobbying campaign" in Washington that represents "the worst threat yet" to the Raiders' Los Angeles move, the club said Wednesday.

Under Commissioner Pete Rozelle's leadership, the NFL is working for a congressional antitrust exemption that would retroactively prohibit the Raiders from moving to the Los Angeles Coliseum.

"The NFL is trying to bribe its way through Congress," Raiders owner Al Davis said. He named Rams owner Georgia Frontiere and six other NFL club owners as contributors of $1,000 each to the reelection campaign of West Virginia Sen. Robert C. Byrd, the Senate's minority leader. He said they want Byrd's support for their cause.

None of the seven lives in West Virginia.

Frontiere could not be reached for comment.

A Washington reporter, Robert L. Novak, said: "They (NFL owners) might have contributed a lot more than that (to various campaigns)."

Novak broke a story the other day in the Washington Column he writes with Rowland Evans that said the club owners who have contributed to Byrd's campaign represent a wide NFL spectrum.

In addition to Frontiere, he said, those sending $1,000 each are Hugh Culverhouse of Tampa Bay, Joe Robbie of Miami, Gene Klein of San Diego, Bud Adams of Houston, Rankin Smith of Atlanta and Leonard Tose of Philadelphia.

"They want his (Byrd's) support for a bill granting the NFL retroactive antitrust exemption (in the Raiders' case)," Novak said.

"The Raiders, who have spent the last three years battling the NFL in various courts, apparently cleared the final legal hurdle between them and Los Angeles Tuesday when a federal appeals court ruled against the NFL again.

"And now the league is stepping up the fight in the only other arena open to them," Raiders attorney Joseph L. Alioto said. "Rozelle and his people are trying to make an end run around the courts. They're trying to buy an antitrust exemption that would nullify the courts' carefully written regulations. They're dangling (NFL) franchises in front of states with influential Congressmen, they're making campaign contributions to powerful U.S. senators and they're hiring some of the most expensive lobbyists in Washington."

From his New York office, Rozelle said NFL owners often support politicians they admire. Commenting on their gifts to Byrd's campaign, he said:

"There are 28 owners, you know, and like other people, they donate to their favorite parties and candidates for office."

Individuals don't necessarily confine their contributions to those who live in their own states, he said, adding:

"A lot of New Yorkers are financially supporting Mayor Bradley's campaign for governor of California. They don't live in California but they admire Bradley."

The basic Raiders' worry is that the 27 other teams will reap so much this year from the NFL's new $2 billion television contract that they can win a Congressional lobbying campaign unraveling the victory of the Raiders in court.

They say the NFL is deliberately setting out to undo the "carefully reasoned" decisions of the courts.

Rozelle: "We think our position is the right one and we're trying to get it upheld, in whatever forum. We're stating matter-of-factly that we need an antitrust exemption in these areas to end the flood of suits against us."

If that's making an end run in Washington, he said, "I would remind you that the Raiders are making an end run in Sacramento. The Raiders are supporting the state bill that would improve their position on eminent domain."

At the moment, the Raiders are ahead on points on the eminent domain and other legal issues and see a greater threat in the NFL's "stepped-up campaign" this week for Congressional intervention. A Senate subcommittee hearing the NFL wants is scheduled Monday.

Said Alioto: "The league is trying to trade (NFL) franchises for votes. They promised (Tennessee) Sen. (Howard) Baker a Memphis franchise."

Baker has said he wouldn't support a bill retroactively adverse to Raiders' interests.

Said Alioto: "But how do you know what Baker will finally do? Rozelle has told the senators from Arizona, Tennessee and other states that they will never get an NFL franchise until he gets his exemption. If an oil company tried this they'd be hauled before a grand jury. We'd all be up in arms if they said they'd build an oil refinery in our state provided we gave them an antitrust exemption."

That is the Raiders' interpretation of Rozelle's actions. The NFL interpretation is wholly different.

"I don't know anything about the oil business," Rozelle said. "All I do when the question comes up is give them the simple truth. When the cities approach us for (expansion) franchises I tell them we aren't going to expand until a bill (granting an exemption) is passed. It's as simple as that. We can't expand as long as people can continue to sue us as the Raiders and so many others have."

The Raiders in their suit have asked for millions in damages against the 27 other NFL teams.

"We have franchise applications from Jacksonville, Indianapolis, Birmingham, Phoenix, Memphis, San Antonio and many other cities," Rozelle said. "I've told them all what I tell everyone. No (antitrust) exemption, no expansion. We aren't going to expand the number of teams that can sue us."

NFL lobbying is being coordinated in Washington by attorney Richard Strauss, former chairman of the Democratic National Committee.

In addition, according to the NFL Players Assn., the NFL's Washington lobbyists include former Kentucky Sen. Marlow Cook, former Kennedy campaign director Paul Kirk, former Presidential adviser Anne Wexler "and many others."

Rozelle, in testimony before a House subcommittee last December, said the NFL wants legislation recognizing it as a single business enterprise, similar to Ford Motor Co. or a national chain store.

"A sports league is a common enterprise for economic purposes," he said. "Since 95 percent of all our revenues are shared, we don't feel that we are in economic competition."

The NFL Players Assn.—and players' associations in pro baseball, basketball and hockey—oppose the proposed legislation on grounds it would be disastrous to players' rights.

Said NFLPA attorney Ben Zelenko: "I think it's a disgraceful business when a big company loses in the courts for it to run to Congress for relief."

One big Raiders problem is financial, Coliseum Commission member Bill Robertson said.

"We (the Raiders and Coliseum) can't compete with the NFL in campaign contributions. The real fight is in Washington now—we're not home free yet—and financially we can't keep up. All we can do is tell them (Senators and Congressmen) that the NFL is trying to mislead them."

Three bills are pending in Congress and one NFL goal is for early action—before the regular season starts in September.

Robertson: "I can't conceive of a responsible legislative body passing a retroactive bill on something like this. But it could happen if we sit back and do nothing."

There are two Senate bills and a House a bill that if passed would take the Raiders out of Los Angeles—either this year or next.

The NFL favors the House bill (sponsored by two Bay Area congressmen, Peter Stark and Don Edwards, and Henry Hyde of Illinois. The Senate bill sponsored by seven senators is similar to Stark and also has NFL support.

Antitrust exemption for sports leagues in the area of revenue sharing. That is, any decision made by a sports league on the sharing of profits by member teams would be beyond antitrust challenge. Revenue sharing is the cornerstone of NFL competitiveness and the league thinks all sports would be better off with similar provisions.

Two Views

More Money for Football Players?

"Players are underpaid if you compare their pay with the revenues they generate"

Interview With Edward R. Garvey

Executive Director of the NFL Players Association

Q Mr. Garvey, the association you head is threatening a strike unless owners agree to put 55 percent of the National Football League's gross revenues into players' salaries. Why do you feel such a demand is justified?

A Because of the economic structure of the National Football League. The NFL owners decided many years ago that they would share all revenues with one another equally. That has brought economic stability, but it eliminates any economic reward for winning or signing star players. A team that never has a winning season makes as much money from the play-offs as teams that are in the play-offs every year. The system is pure socialism.

If an owner has a veteran player who's getting $120,000 and along comes a rookie who will play for $20,000 just to get into the NFL, the temptation for management is to go with that younger player and save $100,000. Why not?

Q Just how would your proposal work?

A We want 55 percent of all revenues put into a fund from which all players would be paid. Of that fund, 70 percent would go to base wages. You'd start with about a $90,000 base for rookies and work on up, on a basis of seniority, to about $450,000 base pay for a player with, say, 14 years of experience.

Q You say the owners' revenue sharing is socialistic. Isn't the pay system you propose also socialistic?

A We are fighting socialism with socialism. What else can we do?

Q Wouldn't such a system of pay based on seniority remove a player's incentive to excel individually?

A No. Our plan would provide special incentives. We would allot about 5 percent more in pay for players on teams making the play-offs. We'd put another percentage into bonuses. We'd give a bonus for starting as opposed to sitting on the bench, and bonuses for the top offensive, defensive and special-team units in the league. And we'd allot a large amount of money for the all-stars chosen to play in the Pro Bowl.

We've structured it very carefully to reward performance. I think our system is much fairer than the present system, because a player would be paid for what he does in the NFL—not for what he did in college.

Q There would be no difference in pay for those playing different positions? A tackle would earn as much as a quarterback?

A Right.

Q Would you permit a player to negotiate an individual contract for more money than your scale provides?

A Yes. But the fund would pay him only the league scale, and anything above that would have to be paid by the

Revenue sharing "would turn over control of the business to the players"

Interview With John M. Donlan

Executive Director of the NFL Management Council

Q Mr. Donlan, why are owners opposed to paying the players 55 percent of the National Football League's gross revenues?

A The percentage-of-the-gross concept is alien to American business. It would turn over control of the business to the players. The owners believe pro football is the most successful of all the sports-entertainment businesses because of the business decisions made by the owners over the years, and the owners don't want to give up the right to make those decisions.

Q Don't football players get lower salaries than athletes in other professional sports?

A There are about twice as many players on a football team as on a baseball team and about five times as many as on a basketball team. So when you examine the team cost vis-à-vis individual-player cost, you'll find they are quite close. As a matter of fact, if you were to take the top 12 players on any football team and compare their salaries with the top 12 on a basketball team, they would be much closer than the averages.

Q Are the football players justified in feeling they're not getting a fair deal on salaries?

A No. Since the contract between the players and owners was last negotiated five years ago, the average salary for football players has more than doubled, to a little over $90,000 in 1981. It will be higher in 1982, but we don't have those figures yet.

The owners have said that they are willing to increase further the wages of their players and improve the benefits. But they're unalterably opposed to the percentage-of-the-gross concept. We had hoped that the players would move away from this idea and propose some specifics such as high minimum salaries or something like that. But they didn't. So at an appropriate time, we'll make a proposal that can be used as a working basis in our negotiations.

Q Your idea is to increase the minimum pay?

A Well, that's one way to do it. There are other ways. For example, you can give people bonuses. Or you can take the existing contracts that have been negotiated between the individual players and their owners and add a dollar amount or a percentage amount to the salaries.

Q Is it true, as the players say, that each NFL team is guaranteed about the same amount of revenue, win or lose, because of the revenue-sharing system?

A Actually, there are vast differences in revenues depending upon whether a team is winning or losing. Attendance may vary upwards of 20,000 people per game.

Q Shouldn't the players share in the big revenue increase that owners will get from the new TV contract?

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Interview With Mr. Garvey *(continued)*

owner. We've advised the players that it would be rare for a player to negotiate more than the scale we've devised, because management still is not going to have any incentive to spend money to win games.

Q Do you know of any other professional sport that gives its players a fixed percentage in revenues?

A No. But in basketball, baseball, hockey and soccer, the home team keeps nearly all of the money it takes in at the gate. Owners keep all their local-television revenues. So it pays a baseball owner to offer big money to attract a star who will bring in more money at the gate or improve television ratings and, therefore, increase TV revenue. That isn't true in football.

In football, only 7 percent of the total seats are empty leaguewide. In basketball, probably 55 or 60 percent of the seats are empty, and in baseball probably 40 percent. If a baseball owner brings in a high-paid star to fill up empty seats, he gets 90 cents out of every dollar that star brings in. But in football, that owner has to give away 40 cents of every added dollar in revenue.

Q Do you feel football players are underpaid?

A They're underpaid if you compare their pay with the revenues they generate or with the pay of other athletes. The NFL player today averages $83,000 a year; the basketball player $214,000; baseball players about $220,000, and hockey players $110,000. Our proposal would boost the average football salary to about $175,000 a year.

Q Wouldn't this make quite a dent in owners' profits?

A No. The average team last year, by our calculations, made a before-tax profit of about 5.3 million dollars. And the NFL has a new television contract beginning this season that will pay each team about 15 million dollars per year for the next five years. That's more than double the 5.8 million dollars each team got from TV last season. Even with our proposed pay scales, owners' profits would be about the same as they were last season.

Q Aren't you worried that a strike might alienate fans and thus hurt the whole football industry?

A Of course we worry about that. I think the fans would be very angry about a lengthy football strike. But that has to be a worry for owners, too. So I think both sides—owners and players—should be working really hard to avoid a strike.

Q Are the charges that have been published recently of widespread drug use by NFL players weakening public support for your wage demands?

A We don't believe that drug charges will hurt our public support, first, because the overwhelming majority of our players do not use drugs, and second, because we have confidence that the fans realize players are only asking for a fair share of the tremendous revenues that they generate.

Q Would your association agree to permit spot tests to identify drug users?

A The players are opposed to an obvious violation of an American's civil rights and an invasion of privacy. We have proposed, however, that a program of rehabilitation should be offered to the very few players who need help, and we are prepared to support such a program for our members. ☐

NFL players and management face off in contract talks.

Interview With Mr. Donlan *(continued)*

A Yes. I think this is what the owners meant when they said that they'd be prepared to improve the benefits and the wages of the players.

Q How much more money will the new TV contract mean to the owners?

A The last contract provided about 5.8 million dollars a year for each team. The networks say the new contract will pay each team in a range that begins at about 10.7 million dollars and escalates to around 16 million. The average will be nearly 14 million dollars per year per team.

Q Is it true, as the players say, that all team owners are now making a profit?

A That was not true in 1981. I would estimate that 7 to 9 of the 28 clubs lost money last year.

Q What about the players' charge that because the teams share most revenues with one another, there is little or no incentive for owners to try to build a winning team by bidding high for star players' services?

A The facts belie that charge. All you have to do is look at the high salaries offered some of the players who were recently signed as free agents. Also, look at the amounts of money—an average of perhaps three quarters of a million dollars a year—that clubs spend on scouting to be able to pick the best players. In addition, of course, many owners are in this game for ego gratification as much as for monetary reward—and they want to produce winners.

Q How much would the players' salary demands add to owners' present costs?

A That's difficult to say, because they started with demanding 55 percent of the gross in salaries and then added substantial amounts in such things as pensions, insurance, deferred compensation, signing bonuses and so forth—things that were not included in the basic 55 percent demand.

In 1980, about 44 percent of revenues went into player costs, which includes salaries and other benefits. For 1981, that figure will be higher—probably close to 48 percent.

Q What impact do you think a players' strike—or a lockout by owners—would have on the NFL?

A That's something the owners are very concerned about. It would certainly bring some negative public reactions. From everything I read and hear, there's no question in my mind that the 55 percent proposal has not gained popular acceptance by the fans.

Q Do you think the recent reports of widespread use of cocaine and other drugs by football players might erode the players' support from the general public?

A I have seen a few statements by players who feel that might happen.

The clubs are very much concerned about these charges. For several years, we have had a program that tries to get players with drug problems to come forward voluntarily to be treated. We are going to have to take a hard look at what else should be done. One question is: Should we give spot physical examinations to detect drug users?

Q Haven't the players indicated that they would oppose such tests?

A We haven't had that confrontation yet. ☐

Mr. **Garvey**. With your permission, I will ask Gene Upshaw to make some further comments.

Senator **Specter**. Welcome, Mr. Upshaw. We look forward to your testimony.

STATEMENT OF GENE UPSHAW

Mr. **Upshaw**. Thank you, Mr. Chairman.

Senator **Specter**. We want to thank you for coming. After your game yesterday and coming here on the redeye, you look none the worse for the wear of either event.

Mr. **Upshaw**. Well, either I did not play too hard or maybe it was the handshakes. We had a little handshake ceremony going on.

I would like to congratulate you on at least getting us all in the same room. That is something that we have not been able to accomplish over the last year. This is the first time I have been in a room with owners and the commissioner and representatives from the union, and so you should be congratulated. Maybe we can get off to a start in the negotiations with people that have authority. We have not been able to do that thus far.

Also, we were here in mid-June at a hearing before Congressman Hawkins, and as players we were here to discuss discrimination in the National Football League. At that time, no one from the league, the commissioner's office—no owners were present. And it is a problem that is important to us as players, and especially as black players, who look at the game of football when it is all over and have no future as far as coaching is concerned.

So, they did not see fit to attend that hearing, but when it comes to something as sensitive as legislation that would give them more power—they are here in force, with lobbyists and everyone else. I would just like for you to take into account the credibility of these people as they come before you.

I feel that as players we have to be concerned about this legislation. It is one that has impact upon us, and it seems as if they are after more power. As president of the union, I have to come here and speak in opposition to this. I do not see granting them any more power. Without the courts, we would have been gone as a union years ago; it has been our only recourse.

We just ask that you consider our side—the players. We have never been contacted by the commissioner's office on this matter. They have never asked for any input from us. And they say that they will speak for the union. Well, I think we can speak for the union. The commissioner can never speak for the union.

I will open it up for some questions.

[The prepared statement of Gene Upshaw follows:]

PREPARED STATEMENT OF GENE UPSHAW

Mr. Chairman, Members of the Committee:

I am Gene Upshaw. I am President of the NFL Players Association, and I am serving my second two-year term. I came into professional football in 1967. I am captain of the Los Angeles Raiders Football team. Since that time, I have been an alternate player representative, player representative, vice-president and now president. All this to say that I have considerable experience both as player and as a union officer in the National Football League. I am also proud to say that we are affiliated with the AFL-CIO.

First let me explain why my statement is late. We have been in two-a-day practices for the past two weeks, and we played our first exhibition game Saturday in San Francisco. It's tough to write a statement under those circumstances. It would be like asking you to write a poem during the debate on the budget.

Allow me to congratulate you, Mr. Chairman. You are the first person who has been able to get Pete Rozelle and Dan Rooney, or any one with authority, in the same room with the union since the NFL started its all-out exemption effort last December. Mr. Rozelle and all other owners are apparently too busy lobbying to participate in collective bargaining. They will risk shutting down the game rather than come to the table.

They were also too busy to participate in a hearing in the House of Representatives on the subject of racial discrimination. Congressman Gus Hawkins held a hearing in June on a subject of great importance to our players. He looked into discrimination against blacks in the NFL. There are no black head coaches or offensive or defensive coordinators. Only about 20 assistant coaches are black, and we have proven a clear pattern of discrimination over the past 21 years by NFL management. But, Mr. Rozelle was too busy to appear at that hearing.

I raise this because it is important for you to judge the credibility of the NFL and its commissioner when considering special interest legislation to help the NFL owners, and I stress that an immunity will help owners - not players, fans, cities or stadium authorities. Are they telling you the truth that they will be more responsible as a group than they have been in the past?

How does Pete Rozelle justify his decision to allow the Cowboys, Lions, Rams, Bills and Giants to move out of their cities? How does he justify Tex Schramm's statement that the Raiders would have been allowed to move "if Al Davis had only asked permission?" If Pete Rozelle liked Al Davis, does anyone think we would be here today? If the NFL had won their court case in Los Angeles, do you think we would be here today? Why can't they operate under the laws as every other business in this country.

Let me say for the record that most of the players on the Raiders would have preferred to remain in the Bay area in a better stadium. We are the only team that plays three games in a row on the road. No one in the League office bothered to see how the move or their efforts to stop the move affected the players. No, even now, they refuse to bargain with us on the impact of the move. Players are now caught in the middle but as of Saturday, the NFL finally acknowledged that we are the Los Angeles Raiders. Players must now find homes in Los Angeles and, if we understand Mr. Rozelle's position, it is that the players must pay all of those expenses. The message is clear. The off-field problems of players are not important to the NFL owners.

The NFL has tried to break this union ever since we came on the scene. The only way we survived as a union was our ability to sue them under the antitrust laws. Absent the courts, we would have been broken. Give them this immunity, and the cities will have no where to turn.

While NFL lobbyists go around the House and Senate office buildings telling staff and Members that this proposed legislation will not hurt the union or the players, keep in mind that not one person from Mr. Rozelle's office has ever discussed the legislation or its impact with a union official. We, not Mr. Rozelle, will make our own decision on the impact. We don't need Bob Strauss or Covington or Burling speaking for us. If Covington and Burling had won in the Los Angeles court room, we wouldn't be here today.

Finally, Mr. Chairman, I cannot figure out how the Stark-DeConcini bill will help the cities, the fans or anyone else other than 28 millionaires. For example, I read in the San Francisco Chronicle that Mayor Feinstein supports the Stark bill, but she admitted that teams could still move. And the day before her endorsement appeared, the Chronicle reported that the San Francisco 49ers and the baseball Giants are pressuring the city to build a domed stadium. And rumor has it, that the Giants may move to New Jersey unless the city yields. How in the world does the Stark-DeConcini bill protect the taxpayers of San Francisco from those tactics?

Let's face it, The Specter bill is the only one dealing head-on with the issues. While we cannot endorse retroactivity, Senator Specter has taken a step forward. The NFL effort offends me as a citizen of this country. Pete Rozelle lost fair and square in court, and now he needs you to bail him out. There is no public outcry to exempt the NFL. In the midst of an economic crisis in our country, the valuable time of this body is taken up with an NFL blitz to gain more power over cities, satdium authorities and the players.

The Congress has acted twice to help the NFL owners. It has never helped the fans or the players. And at our last bargaining session, we were told that the NFL would not bargin with us further because we oppose this bill. When I signed an NFL contract, I didn't give up my First Amendment Rights. I cannot believe that you will now give a blank check to these people again.

Thank you.

Senator **Specter**. Thank you very much, Mr. Upshaw.

On the issue of revenue sharing and your testimony, Mr. Garvey, that it hurts the players, in a context where the union is making a request for a percentage of the gross revenue—as I understand it, 55 percent—is it not in the union's interest to have the revenue sharing on a solid legal basis?

Mr. **Garvey**. Well, if you would attach a rider granting us the 55 percent, my answer might be somewhat different. We have a long way to go, but I think it is important for you to understand why we are asking for a percentage of gross.

It sounds unusual, but because of the revenue sharing in the NFL, network television revenues are the same for each of the owners; playoff moneys are the same for the owners. The worst team in the league gets as much money from the playoffs as the best team. And, in fact, they complain when they win the Super Bowl that it costs them money.

They have, in effect, absolute socialism in the NFL. When I heard about free enterprise this morning, I thought I was listening to the wrong league, because they have adopted this kind of socialism where they have eliminated any reward for winning or doing well or signing stars.

The end result is that individual negotiations are a farce because they can get rid of any player and go with a younger, less expensive player and still make as much money at the box office and as much money from television. So, as we look at it——

Senator **Specter**. Is that a problem? Is that, in fact, done——

Mr. **Garvey**. Yes.

Senator **Specter** [continuing]. Given the pooling of revenues; that the teams move away from seeking the very best players to win the games?

Mr. **Garvey**. Yes; that is right, because if you look at an 8-year tight end who is making $120,000 and you get a rookie who will come in at $22,000, and you know you are going to make as much money for that year no matter what happens, why not save the $100,000 and go with the rookie?

You can describe it as a youth movement or whatever you want, but John Mecom, whose team has never had a winning season in New Orleans, makes as much money from the Super Bowl as the Super Bowl owner-winner. So, because of that socialism, we have had to say, "Look, if you are not going to bid for players"—as we look at their books, we see a wage scale, a secret wage scale, that management adopts behind closed doors. So, when you get that information from management, I think you ought to take a look at that.

We said if individual negotiations will not work because of this revenue sharing, we have to go to a group bargaining to get a percentage of gross, and pay the players out of a fund. That is all brought about by the sharing. If they would eliminate the sharing, then maybe we could go with individual negotiations.

Senator **Specter**. Would you say that that is a prevailing attitude, where teams will not be interested in keeping a more able player because he is more highly compensated, and go to a younger, less expensive player?

Mr. **Garvey**. As a general rule, this is what happens. Now, do not, you know, conclude from that that when Mr. Art Rooney and Dan Rooney go to the games, they do not say, "Gee, I hope that we win today." They do want to win, and they hope that the players are out there struggling.

But what Mr. Rozelle said—and I think we should listen carefully—is, "We are a partnership off the field." And he has said consistently, "We do not compete with each other." And they have said, "We will not participate in the 'madness' of baseball," wherein they bid for free agents and give what I guess would be regarded as some outrageously high salaries.

So, as we look at it, we see that most of the draft choices get the same amount, no matter who drafts them—the second, third, fourth, fifth, sixth round. And we look at a gradual scale throughout the league in terms of wages. It is clear to us that their primary goal is the bottom-line profit and not winning, because they have eliminated any reward for winning.

Senator **Specter**. Well, are you suggesting that the tough, competitive nature of football as it appears on the television screen and on the field is not really there?

Mr. **Garvey**. No; I am not because the players are the integrity of the game. The players have to do everything in their power to make the team and to perform well, and their jobs depend on it and the coach's job depends on it. But that is the trick. Management makes no more money.

Senator **Specter**. You are saying that the highly competitive effort stops short of the management?

Mr. **Garvey**. That is right.

Senator **Specter**. One final question before my 5 minutes expire, and that is what do you see as to the future of pay television and cable television with respect to the ability of the fan to continue to enjoy television football without a specific payment?

Mr. **Garvey**. Well, I think we would all have to be blind to the facts of life today not to conclude, after listening to Mr. Rozelle's answer, that the league plans in 1987 to go to pay cable television. They would certainly try to keep some games on, but it seems quite obvious that that is the future. Most leagues are looking in that direction.

So, our assumption is that that is the way we are going and that that is, in a sense, what these hearings are all about—getting an exemption for the purpose of pooling the pay cable moneys and making sure they can share those equally and continue their socialistic system of refusing to reward anyone for competence.

Senator **Specter**. My time has expired. We will turn now to Senator Heflin.

Senator **Heflin**. Mr. Garvey, now serious do you consider the drug problem in the NFL?

Mr. **Garvey**. We have talked with Congressman Zeferetti about this in the House. We have met with the National Football League and tried to come up with a joint program. We were told that they would not enter into a joint program with us because we were testifying in opposition to this bill. This is in Mr. Upshaw's statement and he may wish to speak to it.

But in our efforts to get a joint program, we are told that our opposition to the bill which you are cosponsoring is the reason why management and labor cannot reach agreement on a joint drug program to educate our people to the danger of drugs.

Senator HEFLIN. Is it a program dealing entirely with education?

Mr. GARVEY. No, sir.

Senator HEFLIN. Is that what you are advocating?

Mr. GARVEY. No, sir. We are talking about counseling; we are talking about making sure that if there is a reason to believe that a player has a problem, through the player representative, who would be trained, and others in management, that a person would get help.

Our primary concern is anonymity. When a public figure is named as a potential drug user, his reputation is ruined for life. And we want to make sure that it is done responsibly and quietly and effectively.

We do not think it is as much of a problem as people have said it is, but as far as we are concerned, if there is one player in the League using drugs, that is one too many. And our players do more to fight drug abuse with young people than any group of people in this country. Gene Upshaw and many other players are constantly working with youngsters to talk about the dangers of drugs.

So, we do not like the broad-brush treatment we have received. We think the sensationalism that Sports Illustrated brought to this, without even, for example, checking to see whether Don Reese might go to prison as a result of his so-called expose, has not exactly helped the situation either. But Gene may want to comment further.

Mr. UPSHAW. Well, we have been brushed, as Ed stated, on this drug issue. It is one that we are concerned about. It is one in which we feel that we have to have protection from. And at the last bargaining session that I attended they did say that they would never enter into a joint program with us because we are fighting this legislation.

Someone mentioned earlier today, had this legislation had any effect on bargaining? Well, it has; it really has.

Senator HEFLIN. Mr. Garvey, I wanted to pursue the question that Senator Specter asked you about revenue sharing, and I do not believe you really answered his question. He asked the question, basically, as I understood it, that in the event that revenue sharing is declared illegal by its being violative of the antitrust laws, how then can you, representing the players, be successful in a revenue-participating program in your collective-bargaining area?

Mr. GARVEY. Well, Senator, first, we know from the 1961 legislation that was passed, I guess, for little Green Bay, they can share commercial television revenues equally without fear of an antitrust suit. And that is increasingly the major source of revenue. It used to be a third; now it is almost two-thirds of their revenues. So, they are not worried about that.

But if indeed revenue sharing is found to be illegal, then maybe individual bargaining would work because the owners would actually compete with one another for talent. And then at the bargaining table, we would change our position and say, conceivably, again, we should allow the player to get the best deal he can among people who are honestly competing with each other, as they assured they would 5 years ago and which, of course, they have not done. So, we would change our position if it were found to be illegal.

Senator HEFLIN. Well, if revenue sharing is illegal, then you are put into the position that you cannot collectively bargain on a league-wide basis and you have to go to individual——

Mr. GARVEY. No, sir. The two do not follow, because they are a voluntary, multiemployer bargaining unit now. Each one could pull out of the bargaining unit now, and so we would still, because the NLRB has decided and the courts have upheld—the fifth circuit upheld the decision in our soccer case—that the league is a joint employer with the clubs with or without revenue sharing, so we would still negotiate on a league-wide basis.

Senator HEFLIN. Well, you may be relying on your fifth circuit case for being applicable all over the Nation in that regard. But as I view it, if revenue sharing—and that is an effort on the part of the players that they would like to have in their collective bargaining—if that is illegal, then you are going to have to negotiate on an individual basis with each team.

Mr. GARVEY. Well, Senator, what would happen is what has been happening in all other sports and in the NFL until now, and that is that the union negotiates a minimum wage and the individual negotiates over and above that. The problem we have is that the owners have this cozy little operation where they will not compete with each other for talent.

We have had over 500 free agents, such as Walter Payton and others, and no one even bids for them. And why should they? Lamar Hunt said that he would sign Walter Payton if Payton would take a $200,000 pay cut. Well, obviously, Payton is not going to do that, but it shows that Lamar Hunt would not make any more money by hiring Payton, so he will not do it. So, that is what would happen if they cannot share revenues.

Senator HEFLIN. Well, in your 55-percent proposal, you allow for individual exceptions, but it is a 55-percent league-wide approach that you are following.

Mr. GARVEY. That is right.

Senator HEFLIN. Well, it seems to me that if revenue sharing is declared illegal, you cannot do that.

Mr. GARVEY. That is fine; then we will not do it.

Senator HEFLIN. Then you go to the individual team basis.

Mr. GARVEY. Well, we would go person by person on an individual basis because we would follow the law. As I understand what happened in Los Angeles, the judge said a three-quarters majority is unreasonable.

I would think the league's response rather than coming here would be, "Well, let us try a majority."

Senator HEFLIN. Well, then, on revenue sharing you would then go into a situation, instead of 55 percent—for quarterback "x," you would go for 4 percent; you would go, then, for a tackle, 2 percent, or a tight end, 1 percent, or whatever the names might be. You would have a situation in which you would have many and wide variances with no minimum.

Mr. **Garvey**. Which is what we have now, sir. And I pledge to you that if it is declared illegal, we are going to put you on our negotiating committee because I like the approach you are taking.

But, essentially, what happens in baseball which is exempt from the antitrust laws—the major league baseball players negotiate a minimum wage, then each individual negotiates with his own club on his own. If revenue sharing were declared illegal, then the owners might have to compete with one other for talent. It would improve the game and the individual would again have some leverage. So, that is, you know, what would happen, in our judgment.

But, again, as I started to answer, the NFL has a three-quarters majority requirement. If they changed that, maybe you do not even have a problem here. The Federal judge in California said that perhaps a majority would make sense. The NFL even has a three-quarters majority requirement to approve a collective bargaining agreement.

What do you think the odds are right now, if you were a betting man, that three-quarters of the owners are going to say, "Boy, I like that 55 percent of the gross. It sounds like a great idea; why did we not think of it?"

We have got a tough row to hoe, and if we were sitting here with that in our pocket, I might have a different answer. But we do not have it yet.

Senator **Heflin**. My time is up.

Senator **Specter**. Senator DeConcini?

Senator **DeConcini**. Mr. Chairman, thank you.

Mr. Garvey and Mr. Upshaw, I want first to say that I am somewhat familiar, having seen public ads and having read articles, with the involvement of the players and the union in the drug program. I compliment you for that involvement and certainly believe that the professionals in your profession have gone a long way. I think it sets a very good example and I am pleased to know that your union is interested in such a program.

You lay some fault for not having a program, Mr. Garvey, on the fact that the NFL will not discuss it because you are opposing this bill. Is it not likely to be part of the negotiations of your total contract about the costs and who would pay and how many hours would be put into the program?

Mr. **Garvey**. I would like to think that, Senator, but they specifically said that they would not agree to this joint program because we are opposing the DeConcini bill.

Senator **DeConcini**. When did they say that?

Mr. **Garvey**. In New York at the last bargaining session Mr. Upshaw was attending.

Senator **DeConcini**. They did not tie it to the negotiations of your contract at all?

Mr. **Garvey**. No, sir; they tied it to our opposition to this bill.

Mr. **Upshaw**. This bill.

Senator **DeConcini**. I am glad to know that; thank you. I am glad to know that.

Another thing I want to say, Mr. Upshaw, is I think you raise the valid point of the NFL—if, in fact, it is true, and I have no reason to doubt what you are telling us is accurate—failing to attend any meetings regarding discrimination. If that is true, I am shocked and I hope the NFL has a valid explanation for not attending. I realize that that attendance would not necessarily agree with what your position might be, but I hope their absence is explained through these hearings before we are finished.

Mr. Garvey, I am still not clear on the bargaining procedures. Are you bargaining for a salary scale for all players, first of all?

Mr. GARVEY. Yes, sir.

Senator DECONCINI. Well, now, it appears to me that your position is a bit inconsistent. Before Congress, you seem to be saying that you want open bidding for the players, with the bidding led by the rich team owners who are hampered, you say, because of revenue sharing.

However, at the bargaining table, you demand the implementation of a salary scale so as to avoid extremely high salaries for some players and low salaries for others. It seems to me that the football economic pie is only so big, and you must state consistently how you feel it ought to be cut up.

So, I put it to you, Mr. Garvey, are you for high salaries for the superstars or high salaries for the average player?

Mr. GARVEY. Very good, Senator. We are for trying to get a fair share of the revenues for all the players, and that would be a lot more for the average player, and possibly the superstars would not have the kinds of salaries that they now have in baseball, where a few people make enormous salaries.

So, I guess in the tradition of the AFL–CIO, of which we are affiliated and which also joins in opposition here, we feel that we should do something to help the vast majority of the players. The individual-bargaining system, because of the revenue sharing that management now has, only helps a few stars. It does not help the average player because he is an interchangeable part, so to speak, who can be replaced with a rookie.

When I hear about loyalty to the team, all you have to do is go up the highway to Baltimore and see what happened to the Colts. They have been "Kush-ed." You know, what happened to the loyalty of those fans? That is our problem.

Senator DECONCINI. You make reference to "Kush-ed." What do you mean exactly by that?

Mr. GARVEY. Coach Frank Kush.

Senator DECONCINI. Yes, I understand. What do you mean he has——

Mr. GARVEY. Well, what I mean is he has gone with all youth. Essentially, the entire veteran team has been cut or traded away, so it is a new group.

Senator DECONCINI. That is exactly what he did at Arizona State University, too. [Laughter.]

Mr. GARVEY. Well, we will make a trade with you, Senator, if you are in the trading business.

Senator DECONCINI. Mr. Upshaw.

Mr. UPSHAW. I would like to comment on one of the things you said on the superstars and average players. At one of our meetings, we had a little exercise to determine who the superstars were in the National Football League, and it was very interesting what came out of it.

We all realize we play a team sport. We also realize that there are no superstars in the game of football. And some of the guys that were participating in this exercise were, in my mind, superstars, but in the minds of all of the players—we do not feel that there are superstars. We all should be compensated fairly, but none of us are right now.

Senator **DeConcini**. Mr. Chairman, I have further questions. Are we going to proceed with another round of questions?

Senator **Specter**. Well, we are going to proceed, Senator DeConcini, with as many questions as you would like to ask.

Senator **DeConcini**. Then I will yield for another round, starting with the chairman.

Senator **Specter**. We did not have the clock up for Commissioner Rozelle this morning or for the Congressmen, and it was just a matter that we had not gotten it started. And we do not wish to suggest by that that anybody else is limited in any way. And I said to Mr. Garvey and Mr. Upshaw before, and I reinvite you now, to testify at length as to what you wish to say because, in a sense, you are in an adversarial relationship to the league, which has testified without these time limitations.

These lights are helpful as reminders, and Senator DeConcini is entitled to whatever questioning he likes and we will start the second round with him now.

Senator **DeConcini**. Mr. Chairman, I thank you very much. I do not intend to be at great length, but I do have a few other questions. And I must say I think the light system is helpful to speed us up.

Senator **Specter**. We have a great many more witnesses and we are now well into the afternoon.

Senator **DeConcini**. I do not want to leave the chairman with the idea that I plan to ask questions for a long period of time, but I do have several and I would like to proceed if I may.

Senator **Specter**. Certainly.

Senator **DeConcini**. Mr. Garvey, regarding the pay cable television issue, I find, at least for 5 years, the attitude of the NFL to be very good and in the public interest, at least coming from where I am coming from. I would like to see them make further commitments, and I hope that they do because I would hate to see professional football and many other sports, for that matter, become what I would consider far more elitist if, in fact, they are on only pay television.

That leads me to a question regarding revenue sharing and the desire in your negotiations to receive a certain share of that. You said, I believe, that if indeed you were able to negotiate a 55-percent share, your position on this bill might be different.

Mr. **Garvey**. Well, I did not mean to imply that.

Senator **DeConcini**. Did you not say that?

Mr. **Garvey**. I did, and—well, please go ahead and finish.

Senator **DeConcini**. Yes; what I wanted to clarify is that I think it is important to find out, really, if you are opposed to revenue sharing because you do not get a cut of it, or are you opposed to it for other reasons? Are you opposed to it for some of both, or could you be persuaded to support revenue sharing? Is there some way that you could be supportive of this legislation with some provisions in it regarding whom you represent?

Mr. GARVEY. Well, Senator, I think that Senator Specter has addressed the core issue; that is, how do you protect the cities? You must set some standards for the movement of franchises. We think we suffer as a union if we have got people moving around all over the place, because you start to turn off the American public.

I do not care what the surveys show. People in Los Angeles are not happy about the fact that the Rams are now in Anaheim. And I found out how far they were away because I was in Anaheim and, by mistake, I took a taxi to Los Angeles. I will never do that again; it is a long way, and they are not happy about that.

As we look at it, it seems that it is reasonable if you say that if the teams are losing money, maybe that is a factor, although Mr. Rozelle said the owners will cheat, so, you know, I guess you cannot use that standard.

Senator DECONCINI. He said the owners will what?

Mr. GARVEY. Would juggle the books.

Senator DECONCINI. OK.

Mr. GARVEY. And I thought it was a rather interesting——

Senator HEFLIN. Their tax books, or which books?

Mr. GARVEY. His revenue books. They might add other people on the payrolls, and so on. That was the testimony I heard this morning.

But that is the way to do it, it seems to me—force them to open their books. How about having an oversight hearing on the question of should they move? I think what this committee, with all due respect, should be looking at is how do you help Mayor Schaefer right now. I think that is the problem.

Senator DECONCINI. I happen to agree, and I think that is 50 percent of at least this particular bill, S. 2784.

Mr. GARVEY. Well, it does not, because your bill only suggests that a group of 28 monopolists will be more responsible than 1. Yet, Tex Schramm, generally regarded as one of the most powerful people in the NFL, says that: "If Al Davis would only have asked, we would have given him permission."

Now, I can assure you that if the Rooneys, who are as nice people as you are ever going to find, were to somehow exchange franchises with Al Davis and then walk into the league meeting and say: "We would like to move from Oakland to Los Angeles," the vote would be unanimous, and I do not think anyone could stop it.

So, the irony is that Mayor Wilson and the city of Oakland are going to find themselves in a position where they will be denied the same opportunity, I guess, to try to get a team to come there if this bill passes.

So, why not give a real answer to the cities, and that is you cannot move unless you come to the Secretary of Labor, or the Congress, or someone, so that the cities are not driven to their knees in begging the teams to stay?

Senator DECONCINI. Well, let me just say I think that is what we are trying to get at. It may be a different approach by letting the NFL make that decision.

Mr. GARVEY. It sure is.

Senator DECONCINI. But now, under the Los Angeles decision, one single owner can make it, and that, to me, is very detrimental to Oakland or any other place. If, tomorrow, the owner of the Cincinnati team decides to move to Phoenix, that would be great for Phoenix, but I think it would be terrible for Cincinnati. And that is what we are trying to get at here.

Mr. GARVEY. I understand, but the problem we have is that the NFL is not trying to get at that problem. We have seen all the draft bills——

Senator DECONCINI. In other words, you do not believe Commissioner Rozelle?

Mr. GARVEY. That is right.

Senator DECONCINI. OK.

Mr. GARVEY. And we have seen all the draft bills and we have talked to the lobbyists. The league did not talk to the union, you know. And what they are saying is: "Give us the revenue sharing and give us the authority to make the decision, because then we as a group will say to the city of San Francisco, 'if you do not build a domed stadium, we are going to move'."

They have never demonstrated any responsibility to protect a city, and then when a Senator introduces a bill that sets standards, they say: "Well, we cannot do that because we might cheat."

Senator DECONCINI. Well, let me ask you this, Mr. Garvey. How would you suggest that a community like Memphis, or Birmingham, or Phoenix, assuming they are granted a franchise, support that team without some participation in the huge revenues from nationally televised games? I do not see how they are going to do it.

Mr. GARVEY. So long as they stay on free television, the 1961 broadcasting exemption takes care of that. They will get a piece of the television package.

Senator DECONCINI. Well, nothing like they would get under this new contract, would you agree?

Mr. GARVEY. Sure. If they come in, they would get one-thirtieth or one-twenty-ninth, or however many teams they add, of the television revenues, and it is $2 billion. I think they can do reasonably well on that. So, they would get the same advantages as any current team.

When I hear that Oakland would not do well with an expansion team—this whole thing could be settled right now if Pete Rozelle would simply say to this committee, as he said to Hale Boggs in 1966, "We will put a team in Oakland." We would not be here.

But I think the NFL might have done us a favor in at least saying to the Congress: We want the whole pie. We do not want any standards. We do not want you to tell us what to do, and we are not going to promise you anything. But if you will trust us, we will take the games off of free television and put them on cable. And if you do not, we will not expand.

And, to me, the statement "no bill, no expansion" is doing to this body exactly what the Minnesota Vikings did to the citizens of Minnesota, saying: "If you do not build us the Hubert Humphrey Dome, we are going to Memphis, we are going to Yankee Stadium, we are going to Los Angeles."

It is what Joe Robbie has done in Miami, saying: "We will go to Los Angeles." It is what Robert Irsay is doing today.

Senator DECONCINI. Mr. Garvey, do you think Oakland is better off now or would be better off with a new franchise than they were when the Oakland Raiders were playing there? As was testified Oakland was one of the top five teams, revenuewise, and had the greatest following that the city has ever seen.

Is that a legitimate argument, that the city of Oakland and the people who live there, Mr. Upshaw, are better off under the situation now than they were when the Raiders were the proud representatives of that great city?

Mr. UPSHAW. But that is what is happening in Los Angeles.

Senator DECONCINI. Pardon me?

Mr. UPSHAW. The same thing is going on in the city of Los Angeles right now. The league can move around teams any time they want. I just do not trust these people. I do not think that they act responsibly.

Senator DECONCINI. I understand that, and I am sure there are many legitimate reasons to have that mistrust. I am not familiar with all of them, but I can understand the problems that you have had in the unwillingness to attend a meeting on discrimination and those sorts of things. I can understand that.

What I am trying to get at here, Mr. Upshaw—no games or anything—is that it seems to me what has happened to Oakland is not good for Oakland and the people there.

Mr. GARVEY. Hear, hear.

Senator DECONCINI. Isn't there a lot of difference between the Rams moving 28 miles and the Raiders moving from Oakland down to Los Angeles; just in the physical ability to get to the games.

What I am trying to get at—and I do not know if you have any suggestions—but how do we go about making it better for the people of Oakland both from the standpoint of their being taxpayers having to have to pay off those bonds, and for the pride and the involvement that they have put into that team.

I would hope a lot of team members like Oakland and are proud to be there and would just as soon not be uprooted and moved because they can get a better deal for pay television, or whatever reason that the owner might have. What do you come up with?

Mr. GARVEY. Senator, first, let me assure you we were not in favor of the Oakland Raiders moving. We are not here carrying Al Davis' water; he can carry his own.

Senator DECONCINI. It appears that you are. In my position, it appears you are.

Mr. GARVEY. Well, I want to make it clear that we are not, and I resent some of the comments that some of the lobbyists have made around here that you cannot listen to Gene Upshaw because he works for Al Davis.

Gene Upshaw is president of the union and our position here is that the people of Oakland will not be any better off with this bill passed—your bill—than they are today.

Senator DECONCINI. Why? Because the owners are going to agree to let them move anyway?

Mr. GARVEY. That is right.

Senator DECONCINI. Now, how do you know that?

Mr. **Garvey**. I do not.

Senator **DeConcini**. All right.

Mr. **Garvey**. But how do you know they are not going to, because their history has been that any time a popular owner wants to move, there is not even a vote taken.

Senator **DeConcini**. But is it not true that if my bill were passed, they would have to vote on it? Now, they do not have to vote. So, is that not better?

Mr. **Garvey**. I do not think it is any better because it is the same people who decided that Carroll Rosenbloom could move to Anaheim, that Clint Murchison could move to Irving, that Bill Ford could move to Pontiac and that Wellington Mara could move to New Jersey. And what you are saying is that——

Senator **DeConcini**. Well, is that not a lot different than moving from Oakland to Los Angeles, distancewise?

Mr. **Garvey**. I do not think there is any difference.

Mr. **Upshaw**. No difference.

Mr. **Garvey**. I do not think there is any difference.

Senator **DeConcini**. Wait a minute. You do not think there is any difference in moving from the coliseum to the Anaheim stadium versus moving from Oakland to Los Angeles?

Mr. **Garvey**. There is a geographical difference. But to the taxpayers in Los Angeles who have a near bankrupt coliseum, as opposed to the taxpayers in Oakland who have a profitable coliseum, one suspects that it is less damaging than some of the other moves that have been made.

But let us look at what exemption has done. How do you explain, Senator, the Milwaukee Braves, in an exempt industry, moving to Atlanta?

Senator **DeConcini**. I do not want to explain that.

Mr. **Garvey**. How do you explain the Washington Senators? Here we are year after year. Bowie Kuhn comes up here and says, "Gee, we are still thinking about Washington, but, you know, you have got a team over here in Baltimore and they might have something to say about whether a team comes into this city." And they are exempt, so how does your bill answer that?

Senator **DeConcini**. I do not pretend that my bill is a panacea and the answer to it all, and maybe it could be corrected. We have got some very intelligent people on this committee and in this body, and maybe something can be added to it.

It seems to me that what happened to Oakland and what would continue to happen if this decision is upheld by the ninth circuit, is going to be detrimental to many, many communities, and that includes Phoenix someday, if it is ever granted a franchise. So, some change that makes it less apt to happen seems to me to be good, and you are saying that, no, it is not.

Mr. **Garvey**. Well, what I am saying is this. I look at the four mayors who are going to testify here, and Green Bay has 15 years to go on its lease, and Kansas City 13 years to go on its lease, and Pittsburgh 29 years to go on its lease, and the 49ers 16 years on its lease. They are pretty well protected.

Senator **DeConcini**. Well, now, wait a minute, Mr. Garvey. That does not mean they are protected. What if Phoenix says, "Look, we will build you a stadium and you will not pay any rent for 10 years. So, you can still pay out over in Green Bay; you can just pay your lease and leave and we will give you all kinds of attractions here." That is very likely to happen with the big money we are talking about, is it not?

Mr. GARVEY. I do not think it is likely to happen, but then why do we not address the problem and why do we not pass legislation along the lines of Senator Specter's that says, "You know, NFL, we do not really trust you. It is not that we do not like you. You look good and you are nice people and you have got a good product and, you know, who would be nicer than some of you people?"

But we have here vested the public interest, and we are dealing with a monopoly that has killed any vestige of competition since the Congress gave it an exemption to merge in 1966. Why do we not tell them, "Before you extract something from us, we want something from you?"

Senator DECONCINI. Well, you support the Specter bill, then?

Mr. GARVEY. I support the Specter bill because it sets standards.

Senator DECONCINI. That is a step in the right direction, it seems to me——

Mr. GARVEY. I think it is a step in the right direction.

Senator DECONCINI [continuing]. To attempt to find something here, instead of just saying, "Hey, we are against it, and, besides, we are in the midst of negotiations."

Mr. GARVEY. Well, Senator Specter is the only one who has talked to us about this particular legislation, but it makes sense because it sets some standards.

Senator DECONCINI. Well, I have talked to your representatives sitting to your right there some time ago. You know, I had the feeling that nothing would be acceptable.

Mr. GARVEY. But you will remember at that time, Senator that Mr. Rozelle was still talking about how they are a single business entity and they share all the revenues and they are a joint venture.

At that time, they were looking for a total exemption. What they are saying is, "Declare us exempt from section 1 of the Sherman Act." Now, we are saying if you want to deal with Oakland, why do we not just be honest about it and pass a law that says there will be an expansion team in Oakland?

Senator DECONCINI. Mr. Chairman, I will finish. I have one last question and it will require a very short answer.

Mr. Garvey, you indicated that the AFL–CIO opposed this legislation. We have not been so informed; at least I have not. Has their executive council met and voted to oppose this?

Mr. GARVEY. In the most recent legislative alert from COPE, AFL–CIO, it urges the AFL–CIO unions to oppose this legislation, specifically naming the Senate bill that you have introduced and the House resolution, the Stark bill, and putting it under a key labor issue.

You are right; the executive council did not take this up. We did not put it before the executive council, but very few pieces of legislation go before the executive council, as you know. What happens is that the legislative department and others make that decision.

Senator DECONCINI. Thank you. I have not heard that officially, but I did want to get a record.

Mr. Chairman, thank you for your indulgence.

Senator **Specter**. Thank you, Senator DeConcini.

I just have one concluding question for you, Mr. Upshaw. Senator Heflin, in his hypothetical question—you are an all-pro guard, of course, and Senator Heflin, in his hypothetical question, postulated a 4-percent sharing for quarterbacks, 2 percent for tight ends, and 1 percent for tackles. What would that leave for guards? [Laughter.]

Mr. **Upshaw**. It would probably be a little more than I am getting right now. [Laughter.]

Senator **Specter**. Thank you very much, gentlemen.

Mr. **Garvey**. Thank you very much.

Senator **Heflin**. I want to ask a couple of questions on this.

Senator **Specter**. Are you following up on my last question?

Senator **Heflin**. Maybe. Yes, I may follow up on it.

I gather, really, that what you would like to do is be able to negotiate revenue sharing on a minimum basis, and then leave open the issue of individual players for individual negotiation. Is that what you would like to do?

Mr. **Garvey**. Well, that is one possibility, and that is what we have done in the past and that is what the other sports do. Because, however, the NFL has no reward for those who do well, we had to change our approach and go for a collective approach. If they would actually compete with one another, although they say they are partners off the field, so I do not know if partners ever compete with one another, then we could consider individual negotiations again.

Senator **Heflin**. I gather that on the revenue sharing, you think that the 1961 act maintains revenue sharing for present television?

Mr. **Garvey**. Yes, sir.

Senator **Heflin**. And therefore you are saying that there is no need for it? You are not recommending the repeal of that. You are, in effect, saying, "I agree with the 1961 act and there is nothing wrong with national network TV revenue sharing."

Mr. **Garvey**. Well, I guess you know better than to ever ask a lawyer if there is nothing wrong with it. But we asked the House Judiciary Committee back in the fall to take a look at that revenue-sharing bill that they passed in 1961 to see what the impact has been on the consumer and on competition and on the number of teams.

We think, for example, that without the revenue-sharing provision and the power that that gave to the NFL over the networks, the World Football League might well be alive today and you might have a team in Birmingham, as you did in the WFL.

But because they had spread their games out on the three networks, it effectively stopped this competing league from getting national coverage. That, it seems to me, is a question that the Judiciary Committee might want to take a look at. What is the impact of revenue sharing on competition? What is the impact on the consumer in terms of increased advertising costs, and the like?

But as a general proposition, representing the union, we would have to say that the revenue sharing for the television package, as we see it today—the free television—there is nothing wrong with it. We do think somebody ought to take a look.

Senator **Heflin**. All right, sir. Now, let us go to revenue sharing on the basis of division of gate receipts between the visiting team and the home team. What is wrong with that?

Mr. **Garvey**. It brings great stability, and that is the good part. Therefore, in the past we have said that it made considerable sense.

Senator **Heflin**. All right. I think those are the two major segments. There may be some smaller ones, and I do not know all the smaller ones. What are the other revenue issues?

Mr. **Garvey**. Well, one other, I guess, that we would comment on is that they share all the playoff moneys equally, so that they eliminate any economic reward for the team that excels. In fact, there is——

Senator **Heflin**. Well, you have got your players getting their portion.

Mr. **Garvey**. The players get it, but the owners do not, and so there is no incentive for them to put the best team on the field.

Senator **Heflin**. Well, you are worried now about the owners rather than the players?

Mr. **Garvey**. That is right. We are not worried about the players because they get fired if they do not——

Senator **Heflin**. In other words, your argument goes toward the wisdom of their decisionmaking in revenue sharing?

Mr. **Garvey**. That is right, because they do not make any more money if they win.

Senator **Heflin**. Well, then, I gather that, basically, the only real reservation that you have about revenue sharing is that it might create something in pay television. Are we narrowing the issues?

Mr. **Garvey**. Yes, sir.

Senator **Heflin**. And that is where your problem is—the future and the possibility of pay television. Have we narrowed the issue to what the real meat of the coconut of the opposition on this is?

Mr. **Garvey**. Well, you are getting close to it.

Senator **Heflin**. What else?

Mr. **Garvey**. On revenue sharing, that is basically it. But we also feel that it has forced us to eliminate the individual bargaining process. And before you go to pay cable and give them an exemption, it seems to me you ought to take a long, hard look at it.

Senator **Heflin**. Well, now, on the issue of moving teams from city to city, I believe Mr. Upshaw says he does not trust the league. And then I gather from this that you do not trust the individual owner.

Do you trust the individual owner, Mr. Upshaw, any more than you trust the league?

Mr. **Upshaw**. It depends on the owner.

Senator **Heflin**. Well, we are talking about establishing a principle or establishing a law. I mean, would you rather that the league make the determination of where they are located, or the end result of all of the owners acting individually?

Mr. **Upshaw**. Look at their track record.

Senator **Heflin**. Are you looking at the track record of those that stayed?

Mr. **Garvey**. No, sir; those that were allowed to move.

Mr. **Upshaw**. Those that were allowed——

Senator **Heflin**. Percentage-wise, you are talking about, what, 10 percent of the overall problem?

Mr. **Garvey**. No; more than that. We are talking about Buffalo, Dallas, New York, Los Angeles.

Senator **Heflin**. Well, they are movements within an area.

Mr. **Garvey**. But what they do, Senator—and I think this is important to understand because when Mr. Rozelle says "no bill, no expansion," imagine yourself as Mayor Schaefer right now in Baltimore and you have Robert Irsay saying to you, "Unless you put $20 million into the stadium and unless you build luxury boxes, I am going to pick up and move," and he gets support from the commissioner of the NFL or from the other owners.

What are you going to do? Do you really want to be the mayor who lost the Baltimore Colts, even if you have done a tremendous job with Harbor Place, and the like? No; in Minnesota, it would be a tremendous problem, because I was there when the league was saying that in order for this team to be competitive, they have to have a bigger stadium, and the team was threatening to move. So, what does that do to the city? The city is going to have to yield and do what the team wants.

And I think it is irresponsible for the Congress to allow the cities to have to deal with this monopoly and then turn around and give them even more power without setting some standards. Just ask the NFL for some guarantees—more than we got in 1966.

Senator **Heflin**. Well, it seems to me that what you are doing is that you are taking the few instances of moving and not taking into account the stability that has stayed with the league.

I really think that if you look at this thing from your viewpoint, and from your selfish viewpoint, you all have not got a great deal of differences. Really, revenue sharing in the long run is going to mean more to you, and I think in the long run it ends up that way, if it is continued and declared legal, from your selfish viewpoint.

Mr. **Garvey**. Well, I wish I believed that. The problem, I think, Senator——

Senator **Heflin**. The only problem you have got, really, is pay television.

Mr. **Garvey**. And we have the impact that this is going to have in any subsequent court case, and there is not a judge in the country—well, I am sure there is a judge in the country, but there are not very many who would look at this and say, "Oh, yes, we should treat the NFL, for purposes of section 1 of the Sherman Act on player restrictions, the same way as we would treat some other business."

And we think that what the NFL is really doing here is eliminating the possibility of bringing a successful court action in the future, should the union be crushed, because that is the real goal. I mean, we are not talking here about people who like labor-management relations.

Senator **Heflin**. That goes on.

Mr. **Garvey**. Sure.

Senator **Heflin**. I mean, that is natural; you are going to say that. We hear that argument, but when you get down to analyzing this bill and analyzing the effect that it will have on you, other than the cable TV, there are not a lot of differences between the ultimate goal of the league and the ultimate goal of you who represent the players.

Mr. UPSHAW. So, what is the rush? Why do we rush through it? What is the rush?

Senator HEFLIN. Well, I reckon you have got the situation where you can have—have you considered what the consequences would be if they allowed every owner to move anywhere he wants to?

Mr. UPSHAW. Where?

Mr. GARVEY. Who is going to do that? The only lease that is up is the Baltimore Colts.

Senator HEFLIN. You know, you lose sight of the carrot that Senator DeConcini pointed out. What is going to happen if you have a situation where any owner can move his team anywhere he wants to?

Mr. GARVEY. That is the case now, Senator. That is the case today, and that is the problem. The case today is that if Dan Rooney——

Senator HEFLIN. Well, it would seem to me that there is a conscientious effort being made on the part of the league to prevent that.

Mr. GARVEY. Well, I do not think so, Senator, because when Senator Specter said "How about some standards," the answer I heard from the Commissioner was, "Oh, no, we do not need standards; trust us."

And if Dan Rooney or Art Rooney, wants to move the Pittsburgh Steelers, do you think they are going to stop them?

Senator HEFLIN. I really am seriously thinking that you all are on the verge of killing the goose that laid the golden egg.

Mr. GARVEY. No, sir; we are just trying to find the goose.

Mr. UPSHAW. We have been looking for him.

Mr. GARVEY. We have been looking for him. We have not found him yet, but when we do, we promise you we will not kill him.

Senator HEFLIN. You would have a hard time arguing about that golden egg with some other people.

Mr. UPSHAW. I tell you, we know how to crack it.

Senator HEFLIN. I support you. I think that you have got people that are justified in getting their very lucrative contracts. I do not differ on that. But if you destroy the concept of revenue sharing and destroy the league's ability to maintain some control over where teams are located, you are going to have a concentration in some few population centers 10 years from now or 15 years from now.

Mr. GARVEY. I agree, Senator, but what we are hearing now is——

Senator HEFLIN. I am glad you agree with that.

Mr. GARVEY. I do not disagree with everything you say. It is just that as you look at it now, what the commissioner is saying is, "If you do not do as I say, we will not go into any new cities." I think if you think about that statement——

Senator HEFLIN. Well, if I think about that statement, how well could they go into those new cities without revenue sharing and say that they are going to be successful?

Mr. GARVEY. They can do it right now. They are doing it right now, and no one has challenged revenue sharing. This is a red herring if I have ever seen one.

Senator **Heflin**. There are only two things in this bill. In my judgment, it needs a lot more, but you are challenging it.

Mr. **Garvey**. Is there a court case that the NFL, with all the lawyers here, could tell us where someone has successfully challenged revenue sharing?

Senator **Heflin**. Do you mean to tell me that if pay television comes along, you will not challenge it?

Mr. **Garvey**. I do not know, but it is 5 years from now.

Senator **Heflin**. Well, that is the only thing that you have really raised on revenue sharing that you have got any worries about.

Mr. **Garvey**. But the last time I looked at this, the NFL was coming here and saying essentially this: "We will not put an expansion team in Oakland, and we are concerned that 5 years from now when we take games off of free television and put them on cable, somebody might sue us. So, Congress, please exempt us from the antitrust laws and, for heaven's sake, do not ask us to do anything in the public interest in the meantime because we are a responsible monopoly."

I grew up thinking that monopoly was not necessarily the keystone of democracy in this country; that you needed some controls over monopolies, such as taking a look at their ticket-pricing structure, taking a look at how they deal with the cities, and the like. Without competition, what is the choice in Chicago?

Senator **DeConcini**. Would the Senator yield?

Senator **Specter**. Senator DeConcini, we are going to be going on. We have five more witnesses.

Senator **DeConcini**. Just one quick question, Mr. Chairman.

Senator **Specter**. And one quick answer.

Senator **DeConcini**. What if the exemption was only for free TV? Would that make any difference to you?

Mr. **Garvey**. We have that, and I would have no problem with it. That is what they have now.

Senator **DeConcini**. OK.

Mr. **Garvey**. That is existing law and we are happy with it.

Senator **DeConcini**. I just wanted to make sure.

Mr. **Garvey**. Sure; no problem.

Senator **DeConcini**. You are satisfied with revenue sharing the way it is now?

Mr. **Garvey**. Yes, sir.

Senator **Heflin**. It took a long time to get that out of you.

Mr. **Garvey**. No, sir. [Laughter.]

Senator **Specter**. Thank you very much, gentlemen. We are going to move on to the mayors now.

Senator **DeConcini**. Mr. Chairman, I regret extending my time.

Senator **Specter**. Not at all, Senator DeConcini; we are doing fine.

We will now call the Honorable Richard Caliguiri, mayor of the city of Pittsburgh; the Honorable Dianne Feinstein, mayor of the city of San Fracisco, Calif.; the Honorable Richard Berkley, mayor of Kansas City, Mo.; and the Honorable Samuel Halloin, mayor of the city of Green Bay, Wis.

Welcome, Mayors. We appreciate your having submitted to us your statements. They will be made a part of the record in full. The practice of the committee has in the past been to request summaries within a 5-minute timespan. As you have noted, we are not iron bound by that limitation, but to the extent that we can live within it, the better.

Mayor Caliguiri, welcome, from the city of Pittsburgh and the Commonwealth of Pennsylvania. It is very nice to have you here. We look forward to your testimony.

Mayor **Caliguiri**. Thank you, Senator; it is good to be here.

Senator **Specter**. You may begin.

Mayor **Caliguiri**. I am sorry. I believe Dianne was going to start this off, Senator, and introduce us.

Senator **Specter**. If that is your belief, Mayor Feinstein, we welcome you and turn it to you.

STATEMENT OF A PANEL CONSISTING OF: HON. DIANNE FEINSTEIN, MAYOR, SAN FRANCISCO, CALIF.; HON. RICHARD CALIGUIRI, MAYOR, PITTSBURGH, PA.; HON. RICHARD BERKLEY, MAYOR, KANSAS CITY, MO.; AND HON. SAMUEL HALLOIN, MAYOR, GREEN BAY, WIS.

Mayor **Feinstein**. Thank you very much, Senator, and we are very pleased to have this opportunity.

On my immediate right is Mayor Richard Berkley from the great city of Kansas City; namely, the Kansas City Chiefs. You already mentioned Richard Caliguiri of the home of the Pittsburgh Steelers. On my far right is Mayor Sam Halloin from Green Bay—of course, home of the one and only Green Bay Packers. And I am here representing the city of San Francisco and the fans of, I think, the greatest Super Bowl champions ever—the San Francisco 49ers.

Across the bay from us rests the city of Oakland, and it is a city that has always carried out, as Congressman Stark said, an intense competition with San Francisco. We contend for trade and air traffic, for economic development, and the like.

And you might say, now that we have the world champion San Francisco 49ers, and the good likelihood that they will be champions again this next year, that perhaps we should be pleased and heartened by the fact that the Raiders, great team that they are, are going to go on to other turf and leave the entire northern California market open to the San Francisco 49ers. But nothing could be farther from the truth.

And I might say that Senate bill 2784 is supported by the dominant majority of mayors of NFL teams. We look back to 1966 and, as a matter of fact, the hearing record of the Antitrust Subcommittee of the Committee on the Judiciary of the House of Representatives carries on page 80 a statement, and it is under the title "Recapitulation of Basic Terms Agreed to by the Member Clubs of the National Football League and the American Football League," and it states in point 2, "It is contemplated that all present member clubs of both leagues will remain in their present locations," and it includes among clubs mentioned the San Francisco 49ers and the Oakland Raiders.

And then I look across the bay at my good friend and colleague, Mayor Wilson, and I see a unique history of support for a team. The Raiders three times went to the Super Bowl. They sold out 12 out of 14 seasons, despite the highest ticket prices in the league;

third highest ticket revenues in the league for the last three seasons before they departed.

And I recall the kind of acclamation that took place when they came home triumphant from Super Bowls. And I recall that over in San Francisco, we had a little touch of envy; oh, how we wished it could be us. Instead, our fans would sit through the rain and would see season after season after season of defeat.

And then, finally, that same kind of victory came to us. And I will never forget when Dwight Clark dropped back in the end zone and he jumped higher than I thought a man could ever jump in the Dallas game and he caught that pass from Joe Montana. And then San Francisco, too, touched that sense of greatness.

And there was a bonding that took place between team and city that will never be forgotten. And all of those years of fans by the thousands attending these games, sitting in the rain, sensing the defeat, walking out dejected, changed. And San Franciscans, as Oaklanders did, held their heads high and walked tall.

When we won the Super Bowl, we had a parade and a million people turned out. They represented every age group, every racial background, every economic and social value on Earth. And they climbed on top of the Stock Exchange Building and they stood out on ledges of high-rise buildings and they said one thing—thank you. And this is the public interest that exists in major league sports and football. This is the sene of dignity that youngsters get as they attach themselves to the Gene Upshaws and the Joe Montanas of the world, and they say, "He is my guy; someday I want to be just like him." And that is something very special and it is hard to transfer it.

When you look at Oakland and you see that kind of support and you see what Oakland is left with today, what are they left with today? A direct loss of $36 million and an indirect loss of over $100 million. What are they left with today? Thirty-three years of payments of $1.5 million a year on the coliseum.

And in 1966 when the merger was made, they were told—and they built two stadiums for that team. It shakes all of us, Senator, because what has happened to Oakland could happen to San Francisco and Pittsburgh and Green Bay and Kansas City. And that is our concern and that is why we remain staunchly behind this bill.

If I might, I might just comment, because Mr. Upshaw or Mr. Garvey mentioned it, the building of a new stadium and a 16-year lease for us—yes, we are looking and trying to build a new stadium. Actually, it is our baseball team, the Giants, that would like a new stadium. Candlestick has certain built-in deficiencies that are difficult to remedy. It still has $20 million of bonded indebtedness for us to pay off.

And we have looked around and we have found—and we have done some preliminary planning—that exclusive of the cost of land and exclusive of the cost of parking, we are talking of an obligation in the vicinity of $100 million in this day and age to build a stadium.

Now, what does that mean? That means that I and others who care must go out and seek donations, in the public interest, to be committed to the building of a new stadium; look at luxury boxes; try and sell advertising rights; try to examine whether you sell these boxes or lease them as condominiums; and be innovative enough in the public interest to be able to produce the kinds of dollars that are doable in this day and age to build a massive enterprise.

And Mr. Garvey's response is, "Well, you have a lease." And then my mind shifts back in time to the San Francisco Giants and a brewery in Toronto—Labatt's, I think it is—who, in 1976, tried to buy the Giants' lease to move the San Francisco Giants to Toronto.

And you might say that we could never build a stadium in a situation that exists today because there would be no certainty, there would be no stability, and we would always be subject to the breaking of the lease, of buying out of the lease, allegations that this was not done or that was not done, and it would be a most difficult situation.

This bill does two things. One, it means a vote of the league if a team is going to move. That, for us, means stability. It does not have specific conditions. That, for us, is acceptable and preferred because we believe it will keep us out of court. And it provides for revenue sharing.

Now, I come from a very dense metropolitan area, different from Green Bay. But Green Bay, in the history of football, has played an enormous role. For some of us in the West, to watch the Green Bay Packers play in that stadium has also been in the public interest. Green Bay could not hold on to the team, nor could any small city hold on to their team, in my belief, without revenue sharing.

So, what you would see, in essence, is the emergence of big-city football because all the teams would gravitate to the major media markets. And I do not think this is in the best interests of American football, which represents our country geographically—big and small—and gives our people a sense of football in America.

I hope that you will pass out Senator DeConcini's bill. I believe it is in the best interests of football, it is in the best interests of San Francisco, and it is in the best interests of the fans and the people who pay the indebtedness on those costs to maintain football in America today. Thank you very much.

[The prepared statement of Mayor Feinstein and attachments follow:]

PREPARED STATEMENT OF MAYOR DIANNE FEINSTEIN

Mr. Chairman, I am appearing today in support of S. 2784, the "Major League Sports Community Protection Act of 1982." This legislation is designed to protect and promote the interests of major league sports communities and their citizens throughout the nation in connection with the conduct of league operations.

Everyone in the Congress is familiar with our professional sports leagues and the stimulating entertainment they provide us. These leagues and their teams enrich the lives of our cities, metropolitan areas, and states. They also serve central economic roles in many communities, and the leagues and teams have also been the beneficiaries of major investments of public monies in facilities of many kinds.

Professional sports have always held a unique place in American community life. Their contribution to popular culture and morale has been recognized by our country's leaders even in time of war and national emergency. Experience has shown, time and again, that few things can unify a community more than a local sports team. The spirit that makes people into "fans" is truly a community spirit that transcends economic, social and other differences. This spirit brings together rich and poor, members of all races, young and old, in support of their "home team."

So it is that when the home team wins, its victory is celebrated not merely by the ownership, management and players. It belongs to the larger community -- to the loyal fans and citizens who, through their tax money, their investments in the construction and maintenance of stadiums as well as other facilities, and attendance at games, have supported the team over the years. They share in the victory -- not only in economic benefit to their city but in civic pride and inspiration drawn from their team's success.

That is the essence and the lesson of the American sports tradition. It is a lesson that cannot be ignored without rending the fabric of professional sports, as well as American community life.

I have been fortunate to personally witness in the Bay Area two outstanding examples of the emotional and civic lift that a sports team can have not only on its fans but on the entire community. The Oakland Raiders captured the Super Bowl title in January, 1981, which gave our friends across the Bay a community triumph they all could share. Twelve months later it was our turn. The San Francisco 49ers defeated the Cincinnati Bengals in Super Bowl XVI last January, and the 49ers victory touched off a city-wide celebration of pride and friendship that continues through to this day.

But unfortunately the prospects for this type of celebration could very quickly be coming to an end in many parts of America.

Many of us were not until recently aware of the very serious difficulties and risks that antitrust laws can create for communities in their involvement with pro sports. These are not only legal risks, however; they are economic as well, arising primarily from the great investments of public funds that cities like San Francisco make in committing to support major league sports teams. In many ways, our communities which have major league sports are threatened with a legal nightmare that threatens their vital interests, their taxpayer investments, and the ability of communities to obtain and enjoy the exciting sports entertainment that these public investments have fostered. The "Major League Sports Community Protection Act of 1982" resolves certain of these problems and protects critical public interests by clarifying a very narrow area of our antitrust jurisprudence.

Communities that support professional sports teams deserve protection of taxpayer, fan, and public interests when team relocations are proposed by team owners. In addition, sports leagues should be able to enforce measures for the equitable sharing of their television, ticket, and other revenues among their member clubs so that all of our nation's metropolitan areas may have a reasonable opportunity to support teams in affordable fashion.

An inflexible application of the antitrust laws will, however, eventually destroy stable league-community relations. Such inflexibility will also ultimately turn teams loose within leagues and the smaller communities will suffer -- communities that now serve as "home" for such fine teams as the Green Bay Packers and Cincinnati Bengals.

For many years, the Congress has recognized the importance of stable ties between our nation's communities and professional sports teams. Communities make both extraordinary financial and spiritual investments in their major league sports teams, and our national policy should recognize that mutual obligations result from such investments and Congress should now act to protect those investments. As the San Diego Union in my own state recently editorialized, the Major League Sports Community Protection Act should "gain early passage. Otherwise, there could be mounting chaos in professional sports across the country. An unscrupulous franchise owner could skim off the cream in a given area for a few years, make unreasonable demands upon the city, and move on to greener pastures if they are not met."

Today we all know that the professional sports stadiums and arenas subsidized or built entirely with taxpayer funds have become a central feature of our urban landscape and of our nation's life style. We in San Francisco are attempting to build a downtown stadium to further urban development and better handle the needs of our sporting public and of our teams themselves. However, funding for such a tremendous undertaking could be greatly hampered if the responsibility of our nation's sports franchises to their communities is not clearly defined. If the authority of leagues to keep franchises in areas where they are being well supported is not clear, then the only factor tying a team to its community may be a stadium lease. But how can teams be expected to sign long-term leases if equitable sharing of revenues is not assured? And why should teams accept long-term leases if other members of the same league are hopscotching from community to community solely to capitalize on individual profit opportunities? And we all know that leases can be broken, bought out, or otherwise changed.

Public concerns with the responsibility of sports leagues in meeting their obligations to communities have been underscored by recent developments. The immediate cause for concern has occurred across the Bay from us. It arises from the effort of the Oakland Raiders' football team to abandon a community that has supported the team for more than 15 years in unparalleled fashion -- an attempt recently endorsed by a federal court jury in Los Angeles. This verdict has the extraordinary potential, in the words of one sports observer, to turn "the NFL franchises into free agents" able to hopscotch around the country whenever individual profit motives so motivate an owner. Speaking of this jury verdict, Mr. Dave Anderson of the New York Times has written:

> "With this precedent, Robert Irsay, who has often threatened in recent years to lift the Colts out of Baltimore, could invite the civic leaders of Memphis, Indianapolis, Birmingham, Phoenix and Jacksonville to an auction for his franchise. And there would be nothing to stop Montreal from bidding, or even Tokyo."

> ". . . .
>
> "This team, remember, was the Oakland Raiders, not the Al Davis Raiders, and Oakland had turned out for its team. As long as those Oakland fans supported the team, Al Davis had a moral obligation to keep the team in Oakland.
>
> "That's what makes sports teams different from other businesses."

In 1981 and earlier this year, the public sense of unfairness about the trial of the Oakland Raiders' case in Los Angeles had reached epidemic levels. When a trial of the propriety of a sports team's move out of one community can occur in the other community that is seeking to lure the team to its environs, rather than in a disinterested district, then public confidence in the integrity of our federal courts is dealt a needless blow. The unfairness of trying the Oakland Raiders' case in Los Angeles was widely noted by many observers long before the recent Los Angeles jury ruling that the Raiders could jump to Los Angeles under the antitrust laws. (Editorial opinions on this subject from various newspapers accompany my statement.)

Mr. Chairman, in my judgment, a jury verdict of this type -- achieved under standards that ignore civic investments and commitments, and directed at wrenching from its community perhaps the most successful team in the NFL -- cannot be permitted to stand as the public policy of this nation. For myself, I cannot understand how the antitrust laws, supposedly directed at consumer interests and public interests, can be interpreted to require the NFL to permit its best supported teams to abandon their communities whenever other cities offer higher profits.

In terms of community interests, I am gratified that the Supreme Court of California has recently ruled that communities confronted with loss of their teams may through the exercise of eminent domain protect themselves. The City of

Oakland and Mayor Wilson have worked ceaselessly in their efforts to protect that community from the Raiders' prospective abandonment. But, given the tremendous burdens already facing the cities of this nation, I do not believe they should be required to resort to extraordinary powers such as eminent domain merely to keep highly successful and profitable teams from moving over the opposition of their league. Rather, Congress should act now to protect the cities and fans of this country by passing S. 2784.

The Community Protection Act recognizes the legitimacy of community and league interests in maintaining existing team locations when sports teams have been, and continue to be, well supported by their communities through two provisions:

First, the bill authorizes sports leagues to decide that member clubs shall not be relocated from their existing territories. This provision guarantees that mayors and other public officials will be able to address their concerns about team moves to leagues, rather than simply to the local team operator seeking to move; and it guarantees that the interests of communities and leagues will be evaluated when transfers are proposed. And if a league recognizes its sense of public responsibility and rejects a team move, the league could not be attacked under the antitrust laws by the team owner or anyone else for holding the team to its existing location.

Second, the Act will not only encourage leagues to operate with revenue-sharing agreements promoting the economic vitality of all clubs, including teams in smaller and mid-sized communities, but will also prevent antitrust challenges of existing league practices. Such revenue sharing increases the likelihood that all members of a sports league may operate successfully and provides a further foundation for sports league decisions to preserve their teams in their existing locations.

From my perspective as a mayor, I believe that this legislation is of critical importance to my community and to many others. Professional sports leagues operate nationwide, and they involve powerful business interests. Leagues also operate with commissioners and decision-making committees designed to look after league-wide interests. Leagues must be entitled to central management on matters as fundamental as team-community ties, because mismanagement or misconduct by an individual club owner on such a matter can destroy the good will of the entire league.

It is to _leagues_ -- not to their individual member clubs -- that Congress, governors, mayors, the media, and the public look for responsible professional sports operations. Leagues are expected to respect community commitments, fan loyalties, and public investments of funds; the _NFL itself_ would be condemned if Mr. DeBartolo and the San Francisco 49ers walked out of San Francisco simply to make more money elsewhere. Leagues must also have the authority to act fairly and in the public interest on such matters. This legislation serves such purposes.

The antitrust laws are designed to promote the public interest and consumer welfare. They are not designed to yield indefensible results, such as where two diametrically opposite actions by a sports league are equally subject to lawsuits and to antitrust challenge. Had the NFL _approved_ the Raiders' move to Los Angeles, I have no doubt that Oakland interests would have filed suit just as we in San Francisco filed suit in 1976 to keep the Giants baseball team from moving to Toronto. So cities will sue teams and leagues when they believe moves are unjustified. Yet the NFL also has been dragged through four years of lawsuits for _disapproving_ the Raiders' move out of Oakland. This situation -- lawsuits if you do one thing, and lawsuits if you do the opposite -- makes no legal or practical sense to me, and certainly it makes no sense to resolve such issues as matters of "antitrust" under the Sherman Act.

The "Major League Sports Community Protection Act" makes practical sense and public interest sense. It will restore a degree of clarity and a public interest purpose to the law on the subject of team relocations and revenue sharing. I commend it to your Committee and to the entire Congress.

[From the San Diego Tribune, Mar. 1, 1982]

MOVE RAIDERS TRIAL TO NEUTRAL GROUND

The first trial over the proposed move of the Oakland Raiders football team to Los Angeles should never have been held in Los Angeles.

What happened after the trial ended proves that. The jury couldn't agree. A mistrial was declared. The two jurors who voted against the move then were subjected to a torrent of public abuse. They were accused of being disloyal to the community.

Imagine, if you will, that the trial were moved to Oakland. Wouldn't Al Davis, the Raider owner, complain and ask for a change of venue? Of course, and he would be entitled to it, because most Alameda County venuremen would be rooting to keep the Raiders playing in the Oakland-Alameda County Coliseum. The team had one of the best records in the National Football League.

Now that the case is scheduled for retrial, the league, which opposes the shift of the Raider franchise, has asked for the second trial to be moved out of Los Angeles. An appellate judge is considering the request. It should be granted.

This is no place for a discussion of the issues involved in the trial. There may be good arguments on both sides.

But how can both sides get a fair hearing in Los Angeles? Fans there are angry about the move of the Los Angeles Rams to Anaheim and they are eager to claim title to the Oakland Raiders. Any juror who votes against the Raiders will be considered a traitor to the new home team.

That's natural, but it's not justice. The trial must be moved to neutral ground.

[From the San Francisco Chronicle, Feb. 24, 1982]

EDITORIAL

CHANGE THE VENUE

The first anti-trust trial on whether Al Davis should be allowed to move his Oakland Raiders to Los Angeles against the wishes of his fellow National Football League owners was held last summer in, of all places, Los Angeles. Before and after the hopelessly deadlocked jury produced a mistrial, something of a circus resulted.

Lawyers for Davis and the Los Angeles Coliseum made blantant appeals to the Southern California jury's regional pride and economic self-interest. The two jurors who held out for the NFL and Oakland were vilified in widely publicized remarks from other jurors and from plaintiff lawyers. Many of the eight jurors who voted for a move became instant media celebrities in Los Angeles as they issued ringing, rooting cheers for the next jury to bring a team to their homeland.

With that record, it seems incredible to us that the Los Angeles-based federal judge who heard all this the first time around has rejected formal pleas that the second trial, scheduled for March 15, be moved to a "neutral" site, say Tucson.

A three-member panel of the U.S. 9th Circuit Court of Appeals is now reviewing a petition to overturn the trial judge's decision on venue.

We hope the panel is considering such matters as these: Clearly it would make no sense to hold the trial in Oakland. Does it make any more sense to try again in Los Angeles, given the experience of the first trial?

The federal judicial system prides itself on its reputation for fairness. How much would that reputation suffer if the same system allows a trial to be held in a place where the public will not trust that the verdict—whatever it may be—was reached by a jury emotionally detached and free of self-interest?

[From the Oakland Tribune, Feb. 25, 1982]

EDITORIAL

MOVE THE RAIDERS TRIAL

Getting a fair jury in Los Angeles for the Oakland Raiders antitrust suit against the National Football League is about as likely as finding snow drifts on the Santa Monica Freeway.

That is what the NFL and the Oakland-Alameda County Coliseum told Federal Judge Harry Pregerson a year ago in asking for a change of venue before the first trial. Pregerson denied their motion, as did the U.S. Court of Appeals in San Francisco.

But when the first round of the battle ended in a mistrial with the jury split 8-2 in favor of the Raiders and the Los Angeles Coliseum, the wisdom of that request became apparent.

In the aftermath of the trial, several jurors revealed that they had felt sorry for Los Angeles, a city that has lost its pro football team to neighboring Anaheim. The two jurors who held out for the league and Oakland were denounced by their fellow jury members and held up to ridicule in the Los Angeles media.

It was all utterly predictable. Too much is at stake for Los Angeles in the Raiders-NFL trial—dollars, politics, fan interest, civic pride—to permit the selection there of a jury that will pay attention to the legal issues, and the legal issues only.

The second time around, the Raiders' suit should be heard on neutral ground, just as the Super Bowl is played on neutral turf.

Judge Pregerson has again refused to move the trial, arguing against the odds that an impartial jury can be found in Southern California. But the NFL and Oakland Coliseum have appealed once more to the 9th Circuit Court of Appeals.

Phoenix, Reno, Portland—all are nice places to visit in the spring. We hope the appeals court will send Al Davis, Joseph Alioto, Pete Rozelle and the other combatants to one of those cities, to enjoy the sun and to see that this unnecessary legal struggle at least receives a fair and impartial hearing.

Senator SPECTER. Thank you very much, Mayor Feinstein.

Mayor FEINSTEIN. And now, may I present Richard Caligiuri, the mayor of the Pittsburgh Steelers.

STATEMENT OF MAYOR CALIGUIRI

Mayor CALIGUIRI. And four Super Bowl winners, I might add. I am quite pleased with that.

Senator SPECTER. Do you agree with all of Mayor Feinstein's testimony, including the part about San Francisco repeating this year in the Super Bowl?

Mayor CALIGUIRI. They often say the road to the Super Bowl is through the Pittsburgh Steelers, and I am sure that will be so again this year. That is probably the only thing we may disagree on, Dianne.

My purpose in appearing before you today is to urge the prompt enactment of Senate bill 2784. I feel this bill is certainly vital if the well developed relationship between professional sports teams and the fans and cities that support them is to survive.

I have submitted written testimony, members of the committee, and I will just paraphrase some of what I put in the written testimony.

I noted this past Saturday that one of our television networks carried a preseason football game between the San Francisco 49ers and the team that announcers referred to as the Los Angeles Raiders. And I certainly feel deeply for the loyal fans of Oakland who had to endure this spectacle, which was caused only because the antitrust laws have been interpreted to allow a sports team to abandon a community without regard to civic interests and public investment in stadiums, and I cannot comprehend such a view. Unless this legislation passes, such moves may become commonplace.

The Pittsburgh Steelers are owned by the Rooney family, and I know this family well and I know they have treated Pittsburgh fairly. The Rooneys regard the National Football League as a partnership, and this is obviously true. They are not trying to drive out other clubs or trying to drive them out of business.

Their competition is on the playing field, and I am proud to say their outstanding teams have given our city a tremendous source of pride over the years. And the fact that the family's name has been mentioned here over the last couple of hours—let me assure you that I have had many discussions with the Rooney family and they have assured not only me, but the fans of Pittsburgh that they intend to remain in Pittsburgh as long as they are the Pittsburgh Steelers, and I look for that to be a long, long relationship.

I have had many thrills with the Super Bowls that they have won from my colleagues who hate to see me come along because they know exactly what I am going to talk about. I have won barrels of oil in Houston. I have won 20 pounds of kielbasa from Cleveland and I expect to win many more, although they still owe me 20 pounds. But since Cleveland had that financial difficulty, I have yet to collect that second 20, but we will see what happens in the future.

But I can assure you the Rooneys intend to stay in Pittsburgh, and Pittsburgh certainly is going to be better for it. Irresponsible actions by one National Football League owner reflect adversely upon people like the Rooneys and all other civic-minded National Football League owners, who recognize the strong bond between the NFL clubs and their home cities.

If the Steelers left Pittsburgh for Los Angeles or any other large city, certainly we would feel deserted and outraged, and that is precisely what the Raiders have done. They certainly have deserted their loyal fans and, I might add, their taxpayers.

I believe that every team in the league should have a voice in choosing the location where any club does business. Therefore, I think Senate bill 2784 certainly addresses itself to that problem.

In addition to giving league owners and members a voice in club location, it also allows the revenue sharing that we have talked about today. To Pittsburgh and other small- and mid-sized communities of our Nation, certainly this provision is crucial. It is revenue sharing which lets teams in smaller markets compete effectively with teams from cities such as New York, Chicago, and Philadelphia, and which allows teams to survive the ups and downs in playing field performance.

Revenue sharing removes the incentives that teams would have to desert smaller cities for larger ones where it might be possible to make a little more money. If communities who have invested heavily in public stadiums are to be protected, revenue sharing, I feel, certainly must be permitted.

Finally, I must add that I certainly find some of the comments of Mr. Garvey this morning—I do not understand all of them, but let me assure you that this legislation has nothing to do with being antiunion—nothing whatsoever.

I come from a strong, strong union town, obviously, in Pittsburgh, and certainly I would not be here today if I felt it had anything to do with being discriminatory against the unions. I know that labor unions throughout northern California certainly support this legislation.

The legislation merely insures that such a move will not occur and that teams like the Steelers certainly will remain strong. And for these reasons, members of the committee, I certainly urge passage of this legislation to give the league stability, and beyond that to give the cities the stability they need to enter into new stadiums or stadiums that are going to be rehabilitated, such as Three Rivers Stadium will be this coming year. I thank you.

[The prepared statement and attachment follow:]

PREPARED STATEMENT OF MAYOR RICHARD CALIGUIRI

Mr. Chairman, I am pleased to appear before the Committee today to voice my strong support for the passage of S. 2784. The passage of this legislation is vital to ensure that citizens across the country may continue to enjoy live professional sports in the years to come.

The record of professional sports teams in Pittsburgh is a long and impressive one. The Penguins of the National Hockey League regularly have been a playoff contender. The Pirates have been one of the most successful teams in professional baseball, winning the World Series twice during the 1970's, and giving us such great stars as Roberto Clemente, Bill Mazeroski, and Willie Stargell. As impressive as the records of these teams have been, it is the record of the Pittsburgh Steelers of the National Football League that has been truly remarkable. The Steelers, led by superstars like Mean Joe Greene, Terry Bradshaw, and Franco Harris captured the Super Bowl championship an unprecedented four times.

The Pittsburgh Steelers play in Three Rivers Stadium. This stadium, which opened in 1970, was built with public funds, and the Steelers' revenues are crucial to the city's ability to service the debt on the stadium. The stadium was a key element of Pittsburgh's program of downtown development and revitalization, centering on our Gateway Center. Though I consider Three Rivers Stadium, which seats 54,000 fans, to be an excellent facility, the stadium is not as large as many of the other stadiums in which NFL teams play. Nor have the Steelers compensated by raising ticket prices -- rather, the team's price structure is among the lowest in the League. The combination of a relatively small stadium and low ticket prices means that the Steelers' individual home gate receipts are near the bottom of the League, totalling, for example, approximately $200,000 less per game than the Oakland Raiders in 1980 when the stadium is sold out. Thus, there is little doubt that by playing in another stadium in another community, a successful team like the Steelers could substantially increase its total revenues.

These Pittsburgh teams have a tremendous following among local fans, in part because they are champions. But that support is based on more than just excellence on the playing field. It results from our community identifying with the teams and their players. Pittsburgh is often called a working man's town, and these are working men's teams. What they may lack in style or flair, they have more than made up for with hard work. They reflect and embody the spirit of our people, and we are united in our support of them. With this record of support, one would naturally think that the future of professional sports in Pittsburgh is assured.

Unfortunately, this does not seem to be true. The recent decision by a Los Angeles court allowing the Oakland Raiders to unilaterally move to Los Angeles to earn more money threatens the structure of professional sports in this country. In making this ruling, the court apparently decided that an owner of a professional sports team could move his club to another city at will, and that the other teams of a league should have no voice in the location of the Raiders. Personally, I cannot fathom why the Rooney family, which has been in the NFL since its earliest days, should not have a say in where the NFL teams operate. The Oakland move disregards loyalty to fans and communities, as well as respect for taxpayer investments in facilities. Without that support and those investments, professional sports simply could not function effectively. But these concerns were ignored by the Raiders and, incredibly, their position was upheld by a court.

I personally feel that this was an incorrect - indeed, an indefensible -- decision. It seems obvious to me that a sports league must be permitted to keep teams in communities that have faithfully supported them. But the decision in the Oakland case is far more troubling to me because I don't see how it can be limited. If sports teams are to be treated under the antitrust laws as sole proprietors in the choice of team locations, it seems equally plausible to me that teams would be entitled to operate as sole proprietors in many other areas as well.

We in Pittsburgh are particularly concerned that under the antitrust law applied in the Oakland case revenue sharing may one day be found illegal. I believe that without the NFL's revenue sharing provisions, cities like Pittsburgh, Kansas City, Green Bay, Buffalo, and Tampa Bay might well be without professional football -- let alone be able to field exciting teams. The Pittsburgh Steelers did not always sit at the top of the NFL as they did during the 1970's and if the big cities are to control professional football, the Steelers may again decline. The sharing of revenues from television and other sources keeps the Steelers above the line. Without sharing of revenues, clubs like the Steelers would have but three choices. They could seek to increase their revenues by drastically raising ticket prices; they could seek to move to a city with a larger stadium where sufficient revenues would be generated to allow the team to compete effectively with clubs located in larger metropolitan areas; or they could decide to accept second-tier status in the professional sports world, thereby losing fan support and perhaps ultimately being forced to cease operations.

This is an intolerable result, yet I submit to you it is one that is not too far off unless the Congress acts now. Without the passage of S. 2784, I fear that my city and many others like it will lose an important part of the fabric of their community.

Because of revenue sharing, however, the Steelers' owners, gentlemen who have a strong sense of civic pride and understand their responsibility to our community, have not felt compelled to move. The NFL's unique revenue sharing plan allows the Steelers to compete effectively with teams from much larger metropolitan areas such as New York, Philadelphia, and Chicago. Because recent court decisions have created the real possibility that the NFL will not continue its revenue sharing program, it is imperative that Congress enact S. 2784.

I also fully support the narrow team location provisions of S. 2784. It merely authorizes leagues "to enforce rules authorizing the membership of the league to decide that a member club of such league shall not be relocated." This provision would not allow a league to give its blessing to the move of a team out of a community. As a result, this provision could come into play in two possible situations: first, a team could desire to move, and the league could conclude that the team should not be relocated; in that circumstance, the community's interests would have been protected, and the league's action would be authorized by this statute. Second, a team could desire to move, and the league could give its blessing to such a move; in that circumstance, this bill would have no effect whatever on the remedies available to a community or on the team's or league's exposure to legal challenge for abandoning the community. In short, I see this bill as protecting community interests in any circumstance likely to arise.

I feel so strongly about this issue that I, along with Mayor Berkley of Kansas City and Mayor Feinstein of San Francisco, recently sent a letter to 34 other mayors urging their support of this legislation. I have attached this letter to my statement. Let me emphasize that I have no intention of injecting myself in any player union or management issue in the NFL by supporting S. 2784. As the attached letter indicates, however, I believe that Edward Garvey, the Executive Director of the National Football League Players Association, is doing a disservice to professional sports and to sports fans in opposing this legislation. Mr. Garvey has gone far beyond the labor-management arena in arguing against this bill, when in fact it states clearly that it shall have no effect on labor-management aspects of professional sports. Considering the broader community interests which are my concern, I believe that passage of S. 2784 is in the best interest of the fans, and therefore ultimately of the NFL players who rely on fan support to earn their living.

The criticism directed at this bill is misguided. I do not understand how the bill can be characterized, as Mr. Garvey has sought to do, as granting the NFL owners and the owners of other professional sports leagues a complete exemption from the antitrust laws. This is simply incorrect. This legislation only requires the courts to recognize what any person of common sense already understands, which is that professional sports leagues in this country must make many collective decisions in order to conduct their business. But the bill does not, for example, affect concessionaire practices, or competing leagues, or ticket pricing, or television practices. It is narrowly drawn to focus on that area -- stadium construction -- where massive public funds have been committed to support professional sports. The players themselves benefit from the salaries that these modern facilities make possible, and they should recognize the taxpayers' interest in assuring the continued use of these facilities.

I am aware that you members of Congress have many pressing and important matters before you, but I can assure you that this legislation is of vital importance to cities throughout the United States. I believe that many citizens in this country are aware of the Oakland Raiders situation. No one else wants community interests to be be destroyed as is occurring in Oakland, and through this legislation the Congress can guarantee that it doesn't. By enacting S. 2784 you can ensure that citizens everywhere may continue to enjoy their local professional sports teams and that the already financially troubled cities of this country will not be saddled with the burden of millions of dollars of debt service payments on unused public stadiums.

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AUGUST 5, 1982

DEAR MAYOR:

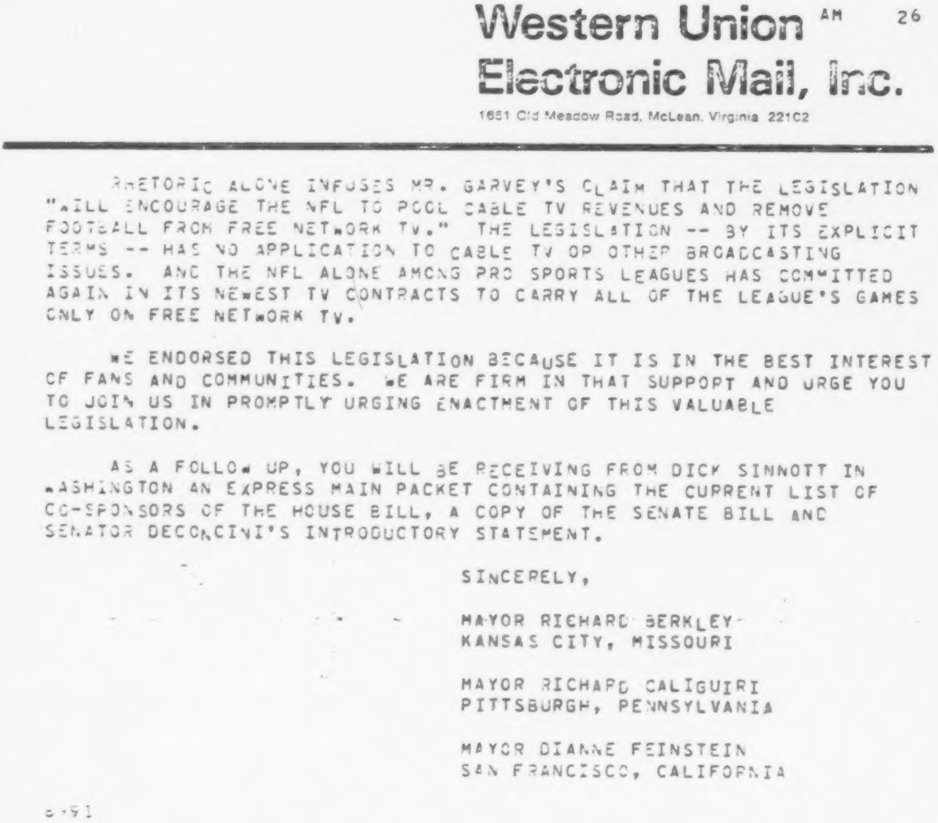
A JULY 23 LETTER FROM EDWARD GARVEY, EXECUTIVE DIRECTOR OF THE NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION (NFLPA) IS HIGHLY CRITICAL OF H.R. 6467 AND S. 2784, THE "MAJOR LEAGUE SPORTS COMMUNITY PROTECTION ACT OF 1982." WE BELIEVE THE NFLPA'S CRITICISMS REFLECT A DELIBERATE EFFORT TO DISTORT THIS LEGISLATION.

THE NFLPA -- WHICH ALONE AMONG PLAYER UNIONS OPPOSES THESE BILLS -- KNOWS THAT THE LEGISLATION ONLY AUTHORIZES LEAGUE DECISIONS TO MAINTAIN TEAMS IN THEIR CURRENT COMMUNITY. THIS LEGISLATION IS LIMITED, AS EXPRESSLY STATED IN S. 2784, TO DECISIONS "THAT A MEMBER CLUB SHALL NOT BE RELOCATED." MR. GARVEY SIMPLY IGNORES THE TERMS OF THE BILL IN MAKING RHETORICAL BUT FALSE CHARGES TO THE CONTRARY.

MR. GARVEY ALSO POINTEDLY AVOIDS NOTING THAT THIS LEGISLATION AUTHORIZES LEAGUES TO ENGAGE IN REVENUE SHARING -- A PRACTICE CRUCIAL TO THE SURVIVAL OF PROFESSIONAL SPORTS IN MANY COMMUNITIES THROUGHOUT THE NATION.

WE CAN ALSO CONFIRM THAT THE NFL HAS WORKED WITH MANY COMMUNITIES TO PRESERVE STABLE TEAM-COMMUNITY TIES. AND SPECIFICALLY, THE NFL HAS WORKED INTENSIVELY WITH STATE AND LOCAL OFFICIALS TO PRESERVE NFL FOOTBALL IN MINNEAPOLIS AND BALTIMORE, CONTRARY TO MR. GARVEY'S FALSE CHARGES.

IF THE NFLPA TRULY SUPPORTS LEGISLATION PROHIBITING MOVES UNLESS THE "TEAM CAN SHOW THAT IT HAS CONSISTENTLY BEEN LOSING MONEY AND SUPPORT," THEN THE NFLPA SHOULD UNEQUIVOCALLY OPPOSE THE RAIDERS' ABANDONMENT OF OAKLAND. THE RAIDERS HAVE BEEN HIGHLY PROFITABLE IN OAKLAND (LIKELY TO HAVE PROFITS IN EXCESS OF $4 MILLION IN OAKLAND IN 1982 IF THEY STAY THERE). YET THE NFLPA'S PRESIDENT HAS TESTIFIED IN SUPPORT OF THE RAIDERS' MOVE OUT OF OAKLAND, AND HE AND MR. GARVEY HAVE NOT DONE A THING TO ASSIST THE OAKLAND COMMUNITY.



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RHETORIC ALONE INFUSES MR. GARVEY'S CLAIM THAT THE LEGISLATION "WILL ENCOURAGE THE NFL TO POOL CABLE TV REVENUES AND REMOVE FOOTBALL FROM FREE NETWORK TV." THE LEGISLATION -- BY ITS EXPLICIT TERMS -- HAS NO APPLICATION TO CABLE TV OR OTHER BROADCASTING ISSUES. AND THE NFL ALONE AMONG PRO SPORTS LEAGUES HAS COMMITTED AGAIN IN ITS NEWEST TV CONTRACTS TO CARRY ALL OF THE LEAGUE'S GAMES ONLY ON FREE NETWORK TV.

WE ENDORSED THIS LEGISLATION BECAUSE IT IS IN THE BEST INTEREST OF FANS AND COMMUNITIES. WE ARE FIRM IN THAT SUPPORT AND URGE YOU TO JOIN US IN PROMPTLY URGING ENACTMENT OF THIS VALUABLE LEGISLATION.

AS A FOLLOW UP, YOU WILL BE RECEIVING FROM DICK SINNOTT IN WASHINGTON AN EXPRESS MAIN PACKET CONTAINING THE CURRENT LIST OF CO-SPONSORS OF THE HOUSE BILL, A COPY OF THE SENATE BILL AND SENATOR DECONCINI'S INTRODUCTORY STATEMENT.

SINCERELY,

MAYOR RICHARD BERKLEY
KANSAS CITY, MISSOURI

MAYOR RICHARD CALIGUIRI
PITTSBURGH, PENNSYLVANIA

MAYOR DIANNE FEINSTEIN
SAN FRANCISCO, CALIFORNIA

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Senator **Specter**. Thank you very much, Mayor Caliguiri.

Mayor **Feinstein**. Mayor Richard Berkley of Kansas City.

Senator **Specter**. Mayor Berkley, welcome. We look forward to your statement.

STATEMENT OF MAYOR RICHARD BERKLEY

Mayor **Berkley**. Thank you, Mr. Chairman. My name is Richard Berkley.

Senator **Specter**. Your full statement, Mayor Berkley, will be included in the record.

Mayor **Berkley**. That is correct. This is an abbreviated statement.

Senator **Specter**. Thank you.

Mayor **Berkley**. I am the mayor of Kansas City, Mo. It is indeed a pleasure to appear before you today in support of S. 2784, the Major League Sports Community Protection Act, introduced by Senators DeConcini, Heflin, and Simpson.

Mr. Chairman, I have provided the committee with copies of a written statement on the legislation before you. In the interests of time, I propose to summarize the major points contained in that statement and ask that it be included in the formal hearing record.

Senator **Specter**. It shall be.

Mayor **Berkley**. As the mayor of Kansas City, but also as a longtime resident of the city and an avid sports fan, I know the importance of our professional sports teams—the Chiefs, the Royals, the

Kings, the Comets, and our fifth franchise, the great golfer Tom Watson—to our local economy and to our sense of community pride.

The Chiefs began playing in Kansas City in 1963. At that time, the American Football League was still new and struggling to gain the recognition and support of football fans. Our stadium was neither new nor very large, but the team and the league worked hard to sell tickets and to encourage fan interest. In return, our citizens responded with tremendous support for the team with public funds to finance major improvements in our stadium.

Through the years, both the Chiefs and Kansas City have benefited from the close partnership which grew out of those early days. Following the team's appearance in the first Super Bowl in January 1967, the voters of Jackson County, which Kansas City is in, approved a $43 million public bond issue for the construction of a modern sports complex in Kansas City which would include Arrowhead Stadium, the current home of the Chiefs.

In the same spirit, the team's ownership, particularly Mr. Lamar Hunt, recognized an obligation to our community to make a success of the team, on which we had spent public money, civic emotion, and much time and effort. Thanks to his persistence and our common efforts, the Chiefs succeeded in Kansas City and have come to occupy a unique and permanent place in our community.

In fact, Lamar has built on his success with the Chiefs by investing millions of dollars in creating his Worlds of Fun, a family theme park which drew 1.3 million customers last year. This year, he opened Oceans of Fun, a unique water-related theme park.

I mention my own city and its experience with the Chiefs as our example of the deep identification of a community with its sports team, which makes the Raiders' proposed abandonment of the city of Oakland so distressing.

Professional sports leagues are a unique form of business. One one level, they sell entertainment, but they also sell civic identity, emotion and community involvement. The name "Kansas City Chiefs" says it all. The Chiefs belong to the fans and community of Kansas City. We support the team. We share the glory of their victories; we share the bitterness of their defeats.

It is because we, the citizens of Kansas City, share so much with our team that we have been willing and will continue to be willing to invest in facilities which are necessary for the team to operate. Should the team ever decide to move, we would feel an enormous sense of loss and betrayal.

Mr. Chairman, the legislation before you today is important because it restores a proper balance among the interests of the individual club owners, their fans, and communities. And do not forget the fans and obligations to them.

Senator Thurmond asked about what difference it makes to the league which cities receive the revenues. It makes a lot of difference. It makes a difference to the fans, who have been committed and who have a longtime loyalty.

As NFL Commissioner Rozelle pointed out in his excellent testimony, many of the rules adopted by professional sports leagues are, by nature, self-limiting; that is, they impose restrictions on the rights of individual member clubs to operate in ways which would be detrimental to the interests of the league as a whole.

Rules restricting the prerogatives of teams to relocate, and in the NFL, particularly, rules providing for the sharing of league revenues, have an enormous beneficial effect on fans and communities by encouraging stable team-community ties and promoting competitive balance among member teams.

To me, one of the striking aspects of the legislation now before you is the fact that the team owners are supporting restrictions on their own individual business conduct, and they are doing so in the overall interests of the league and of the communities from which they draw their support.

Mr. Chairman, I will not repeat the points made by other witnesses with respect to the specifics of S. 2784. However, before closing my remarks, I would like to briefly address several concerns which I have with your bill, S. 2821, which is also before us today.

Let me say first that I appreciate very much the concern which has motivated you, Senator Specter, to introduce your bill. I know that you are in agreement with the basic goal common to both bills of clarifying the application of our antitrust to professional sports and reducing the legal uncertainties facing sports leagues as well as local communities.

Nevertheless, as I have described in more detail in my written statement, I am concerned that the basic approach taken by S. 2821 will possibly create more problems than it will solve.

For example, S. 2821 would extend antitrust immunity to include league decisions to approve the relocation of teams. By contrast, S. 2784 would protect league decisions only where the result would be to keep a team in its present community.

Second, writing specific conditions for relocation into Federal law will inevitably spawn a whole set of legal questions. Groundrules on what may constitute a "material" breach of a stadium lease or when a stadium may become inadequate for the purpose of "properly and competitively operating" or whether a team has incurred "a continuous loss of net income" for 3 years, will have to be developed presumably through extended and complex litigation.

Third, S. 2821 fails to address the issue of revenue sharing. Particularly in the NFL, revenue sharing has had a substantial effect on promoting geographical and competitive balance and, to a large extent, eliminating the need for teams to relocate for financial reasons.

Believe me, I am under no illusion that the proud tradition of the Chiefs in Kansas City could have been possible in the absence of some form of revenue sharing. In this regard, we are not unlike a number of other communities across the country which, in the absence of responsible league rules, would be hard pressed to counter the financial and other enticements which could be offered to our teams by larger cities.

Mr. Chairman, this concludes my prepared remarks. I would like to thank the committee again for giving me the opportunity to express my views to you today on this very important legislation. I urge the Congress to act swiftly to help restore the historical partnership between professional sports teams and their communities—

really, the fans—which has meant so much to us all. Thank you very much.

[The prepared statement of Mayor Berkley follows:]

PREPARED STATEMENT OF MAYOR RICHARD BERKLEY

Mr. Chairman, my name is Richard Berkley, and I am the Mayor of Kansas City, Missouri. It is indeed a pleasure to appear before you this morning in support of legislation intended to protect the interests of fans and communities in decisions affecting the relocation and the stability of professional sports teams.

As the Mayor of Kansas City but also as a long-time resident and avid sports fan, I know the importance of our professional sports teams--the Chiefs, the Royals, the Kings and the Comets--to our local economy and to our sense of community pride. For this reason, I strongly support the provisions of S. 2784, the "Major League Sports Community Protection Act," introduced by Senators DeConcini, Heflin, Simpson and others.

However, before addressing the specifics of S. 2784 and its importance to communities such as Kansas City, I would like to review briefly our experience with our own Kansas City Chiefs. The Chiefs commenced playing in Kansas City in the 1963 season. At that time the American Football League was still new and struggling to gain the recognition and support of football fans. Our stadium was neither new nor very large, but the team and the league worked hard to sell tickets and to encourage fan interest. In return, our citizens responded with tremendous support for the team and with public funds to finance major improvements in our stadium.

Early on, there was some speculation that the Chiefs might move out of Kansas City to a community offering a larger stadium or other financial attractions. But the Chiefs' ownership, particularly Mr. Lamar Hunt, flatly rejected the idea of such a move. Recognizing his civic responsibilities, he felt he had an obligation to our community to make a success of the team that he had brought to Kansas City and on which we had spent public money, civic emotion, and much time and effort.

Thanks to his persistence, and our common efforts, the Chiefs succeeded in Kansas City and have come to occupy a unique and permanent place in our community. In fact, Lamar has built on his success with the Chiefs by creating his Worlds of Fun, a family theme park, which drew 1.3 million customers last year. This year he opened Oceans of Fun, a unique water-related theme park.

I mention my own city and its experience with the Chiefs as our example of the close ties that professional sports teams develop with their communities. It is therefore with a good deal of sadness -- and frankly some apprehension -- that I and other mayors and local elected officials across the country have followed the events surrounding the proposed move by the Oakland Raiders football team to Los Angeles. In many ways the Raiders move has a special significance to Chiefs fans. Although Kansas City is a long way from Oakland, the Raiders have played an integral part in the development of pro football in Kansas City. Over the years, our Kansas City Chiefs' most exciting rivalry has been with the Oakland Raiders. Games between our two teams are remembered by fans in both cities as classics and they have often had an important bearing on the league championship. We have sold out our stadium in Kansas City many times when the Raiders have come to town, and on television we in Kansas City have watched the Chiefs consistently play in Oakland before soldout crowds. As the rivalry has increased, it has had the effect of bringing each of our communities closer together. The fans in our community regard the Chiefs as their team just as the Oakland fans regard the Raiders as their team.

Frankly, it is this deep identification of a community with its sports teams--particularly successful teams such as the Raiders--which makes their proposed abandonment of the City of Oakland so distressing. Professional sports leagues are a unique form of business. On one level, they sell entertainment, but they also sell civic identity, emotion and community involvement. The name Kansas City Chiefs says it all. The Chiefs belong to the fans and community of Kansas City.

We support the team. We share the glory of their victories. We share the bitterness of their defeats. It is because we, the citizens of Kansas City, share so much with our team that we have been willing and will continue to be willing to make the public investments in stadia and other projects to provide the team with the facilities which are necessary to operate.

As NFL Commissioner Rozelle pointed out in his excellent testimony, many of the rules adopted by professional sports leagues are by nature self-limiting. That is, they impose restrictions on the rights of individual member clubs to operate in ways which would be detrimental to the interests of the league as a whole. Rules restricting the prerogatives of teams to relocate and, in the NFL particularly, rules providing for the sharing of league revenues, have an enormous beneficial effect on fans and communities by encouraging stable team-community ties and by promoting competitive balance among member teams. To me, one of the striking aspects of the legislation now before you is the fact that team owners are supporting restrictions on their own individual business conduct -- and they are doing so in the overall interests of the league and of the communities from which they draw their support.

While I am not so naive as to expect the NFL and other sports leagues to act wholy out of altruistic motives, I think it is important to point out that in the two areas of league operations affected by S. 2784, team relocation and revenue sharing, the interests of sports leagues and their fans and communities are most closely aligned. As a mayor who must be concerned with the financial and other effects of a league decision to move a team out of a city where it has been supported and become identified with that community, I am pleased that the team owners of the major professional sports leagues have elected to take a broad view in promoting the long term interests of both fans and communities by encouraging strong team-community ties.

Clearly, we cannot permit a situation in which our Nation's antitrust laws--written to protect the public interest--can be used to allow individual team owners to abrogate contractual and moral obligations to other team owners and to fans and communities which have invested public funds in stadia and other facilities. It is scarcely in the interest of the Nation as a whole to encourage teams to hopscotch from city to city in search of a better financial deal. The effects of such a policy will be devastating on many small and medium sized communities which will not be able to match the kinds of financial attractions which could be offered by the largest cities. In light of the Raiders litigation in California, which has placed in jeopardy the ability of sports leagues to continue to enforce rules designed to prevent this from occurring, urgent action by the Congress is needed to provide guidance to the courts and to restore a proper balance between the interests and rights of individual team owners and the teams and communities which support them.

It is for these reasons that I appear before you this morning in support of S. 2784. The bill restores the ability of professional sports leagues to honor commitments made to communities which invest taxpayer funds in public sports facilities for their teams. In recognition of the gravity attached to any legislation limiting the application of our Nation's antitrust laws, S. 2784 has been drafted narrowly to address only two subjects--league decisions to keep a team in its present community and rules involving the sharing of league revenues among member clubs. The bill would not affect any other professional sports league issue, particularly any issue affecting labor-management relations. In my view, enactment of S. 2784 will provide the necessary basis for restoring the historical partnership between professional sports teams and their communities which has been so beneficial to both.

Mr. Chairman, as a mayor, I have tried to approach the need for legislation such as S. 2784 from the standpoint of communities such as Kansas City. Clearly though, this is a difficult area, and I appreciate the concerns which have motivated Senator Specter to support alternative legislation, S. 2821, which also is before this Committee today. Although I believe that both bills share similar goals in assuring greater protections for the interests of professional sports fans and communities, I must nevertheless conclude that S. 2821 is likely to be less effective in meeting those goals for several reasons.

First, S. 2821 would apply to situations in which a sports league approves a proposal to relocate a team. By contrast, S. 2784 would exempt league decisions from antitrust review only when a decision is made to keep a team in its present community. The so called "one-way street" approach of S. 2784 narrows the antitrust immunity to those situations where local community interests are clearly served. I do not believe that a case has been made for extending the protections offered by the legislation to league decisions to move a team.

Second, writing specific conditions for relocation into federal law will inevitably spawn a whole new set of legal questions. Ground rules on what may constitue a "material" breach of a stadium lease or when a stadium may become inadequate for the purpose of "properly and competitively operating" a team or whether a team has incurred "a continuous loss of net income" for three years will have to be developed -- presumably through extended and complex litigation.

For example, litigation over the move by the Milwaukee Braves baseball team to Atlanta illustrated the difficulty in constructing a uniform measure of "net profit". In that case, two state courts, one in Wisconsin, the other in Georgia, reached exactly opposite conclusions as to the financial health of the team. Instances involving alleged inadequacies of stadium facilities will likewise present significant problems. For example, as my good friend Mayor Halloin of Green Bay will attest, the Green Bay Packers have been extremely successful in small stadia under some management and coaches -- but not under others. Other teams have had similar experiences. In practice, it will be extremely difficult to determine when an "inadequate" stadium may be a significant contributing cause to a team's lack of competitiveness on the playing field.

In my view, sound legislative caution should dictate that before such complex legal standards are established, it must be asked whether they are truly necessary. After all, one of the principal purposes of the proposed legislation is to clarify the application of our antitrust laws to professional sports leagues and to reduce legal uncertainties facing communities that have already invested substantial public funds in stadia and other sports facilites or may consider new or additional investments in the future. We should proceed carefully with legislative language which might detract from this purpose.

Finally, S. 2821 fails to deal with the issue of revenue sharing. It is important to understand the close relationship between revenue sharing practices and league rules on team relocation. In the NFL, for example, which has taken a strong leadership role in developing the concept of league revenue sharing, the very fact that over 97 percent of league revenues are shared among member clubs, provides a base of financial support for each team, which, in all but extraordinary cases, should eliminate the need to relocate teams for financial reasons. Consequently, revenue sharing in the NFL has been a substantial factor in promoting competitive and geographic balance. Believe me, I am under no illusions that the proud tradition of the Chiefs in Kansas City could have been possible in the absence of some form of revenue sharing. In this regard, we are not not unlike a number of other communities across the country, which in the absence of responsible league rules, would be hard pressed to counter the financial and other enticements which could be offered to our teams by larger cities.

In my view, imposing statutory controls on team relocation without simultaneously addressing the issue of revenue sharing would be doing only half the job. Both issues are equally important and both should be addressed in this legislation.

Mr. Chairman, I would like to conclude my remarks this morning with a brief comment on an aspect of the legislation of particular concern to me. I am speaking about the effects of the legislation on professional atheletes and their unions. As Mayor, I often have occasion to deal with business and labor representatives on a variety of issues. My approach has always been to try to encourage labor and management to work together for the common interests of the community. I believe the legislation before your Committee this morning does essentially that--it is designed to promote the interests of fans and communities without affecting the rights and prerogatives of either league management or players' unions to resolve their differences in the collective bargaining process.

As a result, I am most distressed that the National Football League Players Association (NFLPA) would choose to wage what appears to be a calculated campaign of misinformation about this legislation, suggesting that it will harm players' and fans' interests. This is particularly frustrating given the plain language of Section 3 of S. 2784 that nothing in the bill:

> "shall be deemed to change, determine or otherwise affect the applicability or non-applicability of the labor laws, the antitrust laws, or any other provisions of law to the wages, hours, or other terms and conditions of player employment within any sports league, to any player employment matter within any sports league, or to any collective bargaining rights and privileges of any player union within any sports league".

Other players' unions in sports affected by the bill, including basketball, hockey and soccer have considered the explicit language of Section 3 of S. 2784 and have taken a neutral position on the bill. Recently, I joined Mayors Feinstein of San Francisco and Caliguiri of Pittsburgh in sending a telegram to thirty-four of our fellow mayors across the country for the purpose of setting the record straight on this issue. While I can understand the reluctance of the NFLPA to go out of its way to support the League during the current contract negotiations, it seems to me that the players are doing this Committee, themselves, and their fans a serious disservice by continuing to distort the true purpose and effects of the legislation.

As the Congress moves forward in considering this legislation, I am hopeful that the NFLPA will agree to put aside its differences with the League and join me and other mayors in supporting enactment of S. 2784.

Mr. Chairman, this concludes my prepared remarks. I would like to thank the Committee again for giving me the opportunity to express my views to you today on this important legislation. At this point, I would be pleased to answer any questions which you might have.

Mayor **FEINSTEIN**. Mayor Sam Halloin, of Green Bay.

STATEMENT OF MAYOR SAMUEL HALLOIN

Mayor **HALLOIN**. Senator Specter, Senator DeConcini, I am here today on Green Bay's behalf and on behalf of the people of the State of Wisconsin because I believe my views are shared by most NFL fans throughout the State of Wisconsin.

I urge this committee to give its full and unqualified endorsement to S. 2784. If it were not for the NFL practices protected by this bill, there would be no reason for me to be here because there would not be a Packer team in Green Bay for me to speak for.

Green Bay is unique in pro football—obviously, the smallest city, 88,000—and yet we compete with the population giants of New York and Los Angeles. And, still, the Green Bay Packers have won more championships, 11, in our 63-year history, and that is a record that obviously the citizens of our community are proud of.

It has not been a simple matter for the Packers to maintain that membership. Over the years, there have been difficult financial crises that have threatened the team's existence, most recently in 1950. At that time, the fans came to the rescue, digging into their pockets to keep the Packers afloat—an indication of how closely the team is identified with the community and the State.

The sole objective in Green Bay is to produce the best football team possible. It is not only a community-owned team, but under its unique structure, no stockholder in the Packer franchise can be paid a dividend. Thus, there is no profit motive underlying the Packers' position on this bill—only community motives.

Mr. Chairman, let me be brief and summarize my views by making three points. The Packers are critical to our community. They are so thoroughly identified with the community's interests that without the Green Bay Packers, we would never be the same economically, socially or in local pride and identity.

I would ask you to try to compare any other community in this country of 88,000 population, and I would challenge that it is so well identified throughout the Nation as Green Bay is. So, it does affect us.

There are two major reasons why Green Bay still maintains an NFL franchise. First is the NFL's respect for its history, its tradition, and its fans' loyalities. The second factor is found in the league's revenue sharing practices. There is simply no way, in terms of stadium capacity, ticket prices or size of television market, that an NFL franchise in Green Bay, Wis., could expect to survive in the NFL.

If professional football was simply turned loose, I think we would be in serious difficulty, and so would many other communities. We thus strongly support the revenue sharing and other provisions of S. 2784.

Second, we in Green Bay and in Wisconsin believe that it is outrageous to permit an antitrust law designed to protect consumer interests to be used as a vehicle for awarding treble damages against the community-based Packers. It is one thing for a company that illegally fixes prices, thus adversely affecting consumers, to pay treble damages in antitrust. But it is simply outrageous to talk about treble damages when the Packers' only conduct was to abide by an NFL rule that was and is designed to protect consumers and the citizens of Oakland that have fully supported the Raiders team against having the team move to another city.

I have served since 1962 as some elected official in Green Bay. Much of this time was part time, and during that time I also served 29 years as the supervisor in charge of our consumer protection division offices for the State of Wisconsin in Green Bay.

What is difficult for me to understand is that antitrust is to protect the consumer, and in this case I think the consumer is the fan and is the city that invests. And I hope that by this type of protection that is offered in this bill, that protection could continue so that we continue.

The Major League Sports Community Protection Act has received strong support in our congressional delegation from Wisconsin. It is already cosponsored by Senator Proxmire. In the House, it has been cosponsored by members of our Wisconsin delegation, including two members of the House Judiciary Committee—Representatives Kastenmeier and Sensenbrenner. The House bill is also cosponsored by Chairman Zablocki, who is well known to all of you.

We obviously thank all of those Congressmen and Senators from our State who have given it their support. We feel that Senate bill 2784 is eminently fair to all concerned and in the public interest. There are, in fact, few bills before the Congress which are more clearly identified with public interest, consumer interest and the protection of public investment—an important community asset.

I urge the committee to report S. 2784 to the full Senate and to seek its enactment in this session. In Green Bay, we have not only invested in a football stadium that seats better than 56,000, solely for that purpose and solely for that team. We have also invested in a hall of fame that I think will compare to even the national hall of fame because of the pride that the community has had over the years.

The economic effect is estimated at 20 to 25 million annually in our community. In a community our size, that is very important. It has a very important effect on our businesses. And again I would like you to remember that there is no profit motive in our community because of the set-up of the team. No owner, no stockholder can ever receive a dividend.

I really do not believe this is antiunion. Frankly, I believe it is procommon sense and the type of protection that we need so that an organization like the Green Bay Packers can continue to exist. And I think we do have some pride in the fact that a small community in this country can be a part of the NFL, and I hope that this possibility will continue by passage of this bill. Thank you.

[The prepared statement of Mayor Halloin follows:]

PREPARED STATEMENT OF MAYOR SAM HALLOIN

I am the Mayor of Green Bay, Wisconsin, and have held a position in City Government since 1962. I am testifying today on Green Bay's behalf and on behalf of the people of the State of Wisconsin, because the Packers annually play half of their regular season games in Milwaukee and I believe my views are shared by NFL fans generally throughout the State of Wisconsin.

I am here today to urge this Committee to give its full and unqualified endorsement of S. 2784. Indeed, if it were not for the NFL practices which this bill will protect and preserve, there would be no reason for me to be here today -- for there would not be a Packers team in Green Bay for me to speak for.

Green Bay, Wisconsin, is unique in pro football and all of professional sports. It easily is the smallest city (population 88,000) in the NFL, competing on the playing field each year with teams like the New York Giants and Los Angeles Rams, who represent the population giants of the nation. Yet, its teams have won more championships (11) than any other in the game's 63-year history, a record in which the fans of Green Bay and Wisconsin take great and justifiable pride. It also has a highly functional stadium, designed exclusively for football, which contains more than 56,000 seats. And all of them invariably are occupied, even when cold and inclement weather arrives.

Green Bay, I might add, is a charter member of the NFL, having acquired its franchise in 1921, the year the League was born. Only two other teams, the Chicago Bears and St. Louis Cardinals, share this distinction, which is an eloquent testimonial to the support the team has consistently received from its fans. That support has existed ever since the early 1920's when the Packers played their home games in an open field and interested fans passed the hat.

It hasn't always been a simple matter for the Packers to maintain that membership. Over the years, financial crises have arisen to threaten the team's existence -- most recently in 1950 -- but the fans always have come to the rescue, digging into their pockets to keep the Packers afloat, an indication of how closely the team is identified with the community and the State.

Packer fans long-time love with the team is underscored, for example, by the experience of salesmen, who report their sales invariably are up during the week after a Packer victory and down during the week following a loss. This clearly illustrates the fans' emotional attachment to the team.

As a practical matter, the Packers also have a substantial overall economic impact on Green Bay and Wisconsin. Best estimates available indicate the Packers generate between $20 and $25 million of business annually, much of it benefitting hotels, motels, restaurants, service stations, department stores, and a variety of other businesses.

What I am saying is that the Packers mean so much to the community and are so thoroughly identified with the community's interests that without that franchise Green Bay would never be the same -- economically, socially, or in local pride and identity.

There are two major reasons why Green Bay still maintains an NFL franchise. One is the NFL's respect for its history, its tradition and its fan loyalties. The NFL is aware of the early role that Green Bay and the Packers played in the development of professional football and it chooses to recognize and continue to honor that contribution.

The second factor which makes it possible for Green Bay to operate an NFL franchise is found in the League's revenue sharing practices -- without which, gentlemen, the Green Bay Packers organization simply would not exist today. There is simply no way, in terms of stadium capacity, ticket prices, or size of television market, that an NFL franchise conducting home operations in Green Bay, Wisconsin, since it does not have the advantages of teams in such metropolitan areas as New York, Philadelphia or Los Angeles, could expect to survive indefinitely in the NFL if professional football was simply turned loose. And a number of other clubs and communities are similarly situated.

On the other hand, because of revenue sharing -- and the extraordinary support the team has always enjoyed -- it is a highly solvent organization with a $15,000,000 reserve fund, one which now is making it possible for the Packer Corporation to build an indoor practice facility and expand its administration building in order to stay fully competitive on the football field with the other 27 teams in the League.

And this progressive approach only serves to underscore the organization's -- and the fan-stockholders' -- commitment. The only concern, the sole objective, is to produce the best football team possible. It not only is a community-owned team but, under its unique structure, no stockholder in the Packer franchise can be paid a dividend. Thus, there are no profit motives underlying the Packers' position on this bill -- only community motives.

Mr. Chairman, we in Wisconsin strongly support the team location and revenue sharing provisions of S. 2784. The Packers organization also appreciates the support for the League's position which is implicit in S. 2821, but I would like to suggest a difficulty in attempting to deal with franchise transfer issues in terms of standards. The Packers are a viable organization today -- not because their revenues match the revenues of some of the more favorably situated NFL teams -- but because of an accumulated reserve made possible by accumulated dividends during profitable years in the past. But there have been repeated periods in the past, and perhaps even today, when the Packers' operation would not have met the standards of S. 2821.

I might add that, while the Packers, the City of Green Bay, and the people of Wisconsin are of necessity keenly interested in preserving the revenue sharing policies of the National Football League, our community also feels that it is outrageous to permit an antitrust law designed to protect consumer interests to be used as a vehicle for the awarding of treble damages against the community-based Packers. And it is particularly outrageous to do so when the Packers only conduct was to abide by a rule that was and is designed to protect citizens of a community that has fully supported its team against having the team moved to another city. That's why we feel S. 2784 should be supported in its entirety.

It also should be noted that the bill is narrowly written, offering very little antitrust "immunity" to sports leagues. Yet it does deal with two key subjects, both of paramount importance to the Green Bay Packers: (1) it authorizes leagues to enforce their rules enabling their membership to decide that league teams should not transfer out of communities where they are operating; and (2) it encourages leagues to operate with internal league agreements for revenue sharing among their member clubs so that teams in smaller and mid-sized communities will be assured of the economic strength to continue successful operations.

The bill also is very specific and expressly states that it has no bearing on any player, player union, collective bargaining, competing league, ticket pricing or television matter.

In other words, we feel it is eminently fair to all concerned. There have been, in fact, few bills relating to professional sports which have come before Congress in recent years which are more clearly identified with public interests, consumer interests, and the sense of public responsibility which Congress has regularly urged upon sports leagues. The Green Bay Packers, the citizens of Green Bay, and the citizens of Wisconsin urge this Committee to give S. 2784 its full support.

Senator **Specter**. Thank you very much, Mayor.

Mayor Feinstein, did you have an opportunity to review Senate bill 2821?

Mayor **Feinstein**. No, I did not review it.

Senator **Specter**. Well, then, Mayor Berkley, in your testimony you did refer to 2821 and said that you preferred 2784 because it protected league decision to keep the team. But if 2821 were not passed and the other bill, 2784, were passed, the league would have the same procedures which it has now to move a team away.

Do you have any concern for the contingency that Mr. Garvey described that the league might then decide that it wished to move a team?

Mayor **Berkley**. Well, in looking at the record which has been referred to several times in testimony over the last several decades, the only moves, outside of the one which has just been in contention, which I think is as irresponsible as can be—moving from Oakland to Los Angeles—all the others, the other 19 or 20 moves, have all been in the same metropolitan area. And I think there is a dramatic difference between those two sets of circumstances.

Senator **Specter**. Well, there is a difference there. But you prefer legislation which would leave it to the discretion of the league, as opposed to legislation which would establish a fans' interest to keep a team unless it were a distressed business?

Mayor **Berkley**. I am concerned by the guidelines that have been outlined, and I know that your intentions are extremely good and that you are quite concerned about the communities and the fans. But I am concerned that with the guidelines that exist in your bill, there could very well be some activities carried on by a single owner who would not have good intentions, such as Al Davis, who did not have good intentions.

Senator **Specter**. Such as what?

Mayor **Berkley**. As was mentioned earlier, they can have expenditures that are not necessary. They can discourage fans. We saw that in Kansas City with a gentleman named Finley, who did everything possible to discourage fans because he wanted to have the——

Senator **Specter**. Do you think an owner might make an active effort to lose money to qualify for moving?

Mayor **Berkley**. Yes, and he did it to discourage fans, because he constantly talked about moving.

Senator **Specter**. But he did not have to lose money in order to be able to move.

Mayor **Berkley**. No, he did not, but he just wanted to have the excuse so that he could present that to the league.

Senator **Specter**. Do you think Mr. Finley needed an excuse?

Mayor **Berkley**. I think he did, yes. If you look at the record and the potential in Kansas City, we have the highest ratio of fans and attendance at ball games to the population of the metropolitan area of any of the major league baseball teams.

Senator **Specter**. I do not have any question about the intensity of Kansas City fan loyalty. I only have a question about whether Mr. Finley needed an excuse to move.

Mayor **Berkley**. Well, he wanted to create one by having lower attendance, in my estimation, so that he would have a sales pitch to his colleagues, and I think that is what is outlined in the proposed bill. Now, maybe there could be some modifications in it that would tighten it up, but I am afraid that it might create guidelines that would cause litigation and would cause a standard which, once met, would then sugar the excuse for moving.

Senator SPECTER. Mayor Caliguiri, do you think that it would be useful if baseball had a similar profit-sharing arrangement which football has?

Mayor CALIGUIRI. Probably.

Senator SPECTER. Why?

Mayor CALIGUIRI. I think you would have more parity in the league. As you find it today, Senator, with some of these salaries that are being paid to some players and some owners being able to meet those salary demands, other teams are at a disadvantage. So, with revenue sharing, you get that parity where all teams have an opportunity to vie for the players, and have an opportunity to be in the playoffs, and I think that is important to all cities. That certainly creates an incentive; that creates fan interest, which ultimately is good for the game, which is ultimately good for the cities.

Senator SPECTER. Well, I certainly commend your recent activities in the stadium renovation of the city of Pittsburgh, designed to improve the situation for both the Steelers and the Pirates.

Do you have any concern that a problem could conceivably exist where the Pirates might desire to look for greener pastures?

Mayor CALIGUIRI. The Pirates have indicated through all the negotiations, which took more than 1 year to consummate, that it was not their intention to leave. But we had a problem in Pittsburgh with the construction—the original construction of the stadium. We have since worked out those discrepancies to the satisfaction of all parties concerned—both teams, the Pirates and the Steelers, as well as the authority and the city of Pittsburgh.

For these reasons, we feel quite comfortable now that these teams will remain in the city well into the next three decades.

Senator SPECTER. My time is up, so I will yield now to Senator DeConcini.

Senator DECONCINI. Mr. Chairman, thank you very much.

Mayor Feinstein, I was going to ask you the question of how you think a professional football team—in your case, the 49'ers—contributes to the community. You were so eloquent in your opening statement that I think you made your point very, very well.

So, I will ask Mayor Berkley—Mayor, it appears to me that even if S. 2821 had been in effect when the Kansas City Athletics started to move, it would not have stopped that move. How do you feel about that, particularly in light of the success of the Royals recently in your city?

Mayor BERKLEY. Well, the point I was trying to make earlier was some guidelines are very hard to cover all circumstances. And I am concerned that if you have those guidelines, first of all, there will be a great deal of litigation about them from time to time.

Second, they will almost be a target or an objective that could be used by an irresponsible owner. And once they are met, he would say, "There, we have done that or failed to do that, and consequently we have the right to move," and that bothers me. I think I would much rather trust the responsibility under the other Senate bill as outlined rather than the specifics mentioned here.

Senator **DeConcini**. Do you believe that there are any guidelines or any way to approach this problem to give the cities a greater participation—I would not say greater participation, but give the cities a little more assurance that any decision would not be an arbitrary decision by a majority or three-quarters of the owners? Have you thought about it?

Mayor **Berkley**. I think there could possibly be some guidelines developed that could supplement the situation. I do not have those specifically in mind at the moment, but there possibly could be some additional guidelines.

Senator **DeConcini**. Do any of the mayors ever anticipate a situation where you could not agree with an owner on a new lease, and thereby be in a position of having a little bit of a hammer yourselves over the owner of the team by saying, "Well, we just have to have 10 times the rent; that is what our comptrollers and advisers advise us, and so now you have got to stay here?"

What is your response? Is it simply the fact that the fans and your constituents want that team in your city and you do not want to be the mayor that lost the professional football team?

Mayor **Berkley**. Is that directed to all of us?

Mayor **Caliguiri**. Well, let me say that that is where the negotiations come in, Senator. We negotiated for well over a year, as I indicated before. We have in the lease agreement a clause for arbitration, if necessary.

Senator **DeConcini**. You do? Is that binding on all parties?

Mayor **Caliguiri**. It is not binding, but the arbitration law can come into effect where all parties would submit whatever proposal they would want to submit, and usually it would be acceptable. We, fortunately, did not have to go into that. However, in any negotiation, whether it is management or union, you go in there with the thought in mind that you are going to be able to settle your differences by laying things on the table and through compromise. That is what we were able to do in Pittsburgh.

I feel confident that most cities and club owners can come to these positive conclusions. Obviously, there may be an exception to that, but I think in most cases you can be able to do that. If there is some other item that can make it even more binding on keeping teams in the cities, I think all of us mayors would be in favor of something like that.

Senator **DeConcini**. Mayor, let me ask you another question. This legislation has received strong support from northern California union leadership. As the mayor of a city with many residents who are union members, I realize it would be just your opinion as to what their position would be if the Steelers were considering moving.

Mayor **Caliguiri**. I would even hate to think of that, because union members are fans, too; quite a few of them are fans in Pittsburgh. The thought of the Pittsburgh Steelers and the Pirates moving is a thought that we do not even want to entertain.

We have Renaissance II going on in the city right now; it has been there for about 4 years. And the fact that we have had some winning teams—and particularly the Steelers—has given Pittsburgh a sense of being very positive. The sayings in Pittsburgh are "whatever it takes" and "we are family." Those two things were not only sayings for the sports teams, but they have permeated throughout the city.

And we feel, all of us in Pittsburgh, that there is nothing that we cannot do now, and the sports teams have helped that attitude.

Senator DECONCINI. Thank you very much. I take it, without reservation, that there is no one who would like to see their team moved to Phoenix, Ariz. [Laughter.]

Thank you, Mr. Chairman.

Senator SPECTER. Senator Simpson, we have reserved 2 hours for you. [Laughter.]

Senator SIMPSON. Will you come to Cheyenne? [Laughter.]

Well, no one is going to come there, so I guess that is why I am on the legislation.

I thank you, Mr. Chairman and Senator DeConcini. You have certainly moved forward very swiftly with prompt hearings, and I apologize for being unable to attend the opening of the session this morning.

I did cosponsor S. 2784. I did not choose to cosponsor the original draft of the legislation several weeks ago, which indeed I did feel had some possible intrusions into union and management negotiations. I have a question, but I am not run down here yet.

Now, I feel that both of these measures, at least to me, seem to handle this issue of not attempting to intrude or to get into union-management difficulties. I would hope that would be the case.

The reason I am involved in it is because there is nothing in it for me at all. There will be no team in Casper or Cheyenne or Cody, unless it could be the Buffalo Bills-Cody, which would not be too bad, would it, when you think about that later tonight? [Laughter.]

But my interest comes from living in the geographical area of the Denver Broncos, which is really a regional team in our part of the country. Wyoming people support the Broncos and Utah people; I know that is hard to believe, but it is true.

Joe Foss was president of the American League. He and my father served together as Governors, and I am sure the testimony has been received about how he told the city of Oakland, "Do not worry; if we get it here, it will remain here."

Fan loyalty, I think, should be rewarded at all levels. I think it is important to community support. I cite that Denver analogy. Woeful teams in those early years with striped sox ended up in the Super Bowl. So, I hope that that can continue, and it should.

[Whereupon, Senator DeConcini assumed the chair.]

Senator SIMPSON. From your positions as mayors of these cities with NFL franchises, and based upon your experience with the NFL in whatever intensity or level that is, do you each have a trust or a confidence or feel supportive toward the NFL in their dealings with your communities? I would ask that, Dianne.

Mayor FEINSTEIN. If I may, Senator, yes, I do. I think that it is logical that owners should get together to have the opportunity to develop the kind of partnership. They have a major investment in the sport and seeing that the sport continues in the healthiest and I think most broadly representative way possible.

Really, I think what the NFL does is give football stability, and I think if you have stability, then you are going to have a good working situation all the way around.

Senator **Simpson**. Yes, sir?

Mayor **Berkley**. Senator, yes, I do. I think the revenue sharing concept is a very important part of that. I think that idea, which was developed some time ago, has maintained the stability and the balance in the NFL. If you will check the record, I believe that virtually every team has appeared in the playoffs, maybe with one or two exceptions, in the last decade. We have seen a number of different champions in the leagues. We have had a number of different Super Bowl champions.

We have had an excitement throughout the country because every city can anticipate that there is going to be a stability and a tenure, because they know that that revenue will continue to come in year after year from the television. They also know that virtually every game every weekend is one that either team can win, and that is the kind of competition and excitement that I think has drawn the fans and created the support and interest and loyalties around the country.

Senator **Simpson**. Yes, Mayor?

Mayor **Caliguiri**. My exposure, Senator, has been with the present owners of the Steelers, the Rooney family. Certainly, if they are indicative of the other owners, I have no problems with the integrity of the National Football League.

I feel that most owners in the National Football League certainly want to remain in the cities that they are now presently in to give, as the other mayors have mentioned, stability to the league, because when you have that stability, you generate fan interest. If you generate fan interest, they are going to go to the games. And, of course, that generates the revenues necessary for the team owners and, of course, revenues for the cities themselves either through taxes or whatever the means may be that that city somehow enjoys the revenues shared.

So, I have the confidence in the league that they will do what is right because I see that happening in Pittsburgh.

Senator **Simpson**. Yes, Mayor?

Mayor **Halloin**. Senator, I think the past history obviously indicates that we do trust the league. After all, Green Bay has been a charter member in the 63-year history. Now, they have, at least, I think, recognized the contribution that the Packers and the small community have given to the league. And the fact that we have continued to be a member of the NFL over that period indicates, I think, that we can trust them, when they allow a small community still remaining against the population giants throughout the country.

I think also, though, that I have to make it very clear that I do not think there is any way a city the size of Green Bay or the Packer Corp., could continue without that equal revenue sharing, especially of the TV rights.

We also certainly appreciated the efforts of Senator Specter. But I think the problem that we see with his bill is actually that there would be some problems with standards, and in the past or even now, the Packer Corp., or the city of Green Bay may have had trouble in meeting those standards.

That is why we are so supportive of Mr. DeConcini's bill, because I think it provides us the type of protection—we have faith in the NFL that if this protection continues, we would be able to continue very competitively on the football field.

Mayor CALIGUIRI. If I might for one second—this is the 50th anniversary of the Pittsburgh Steelers in our city and there is a great celebration that has been going on and will continue this fall. The city is just supporting it tremendously, and that is the type of ownership I see and I think it is a tribute to Art Rooney, who kept the Steelers there since 1932 when there were many times that he should have probably gotten out, but has remained in the city.

Senator SIMPSON. This revenue sharing obviously is a very key thing in the operation and, of course, cable television makes it even more important, does it not, to continue the revenue sharing aspect?

Mayor HALLOIN. Senator, if I could make one comment, I am trying to think of some questions that I heard earlier. Actually, you know, I have heard comments about why are not the commitments for a longer period of time. When you think of the changes in the electronic industry or in the television industry, it is amazing to me that the National Football League can even commit itself for 5 years. The changes are so tremendous that I think it shows good faith on their part.

Certainly, at least as mayor of the city of Green Bay, and again a community of our size, we hope that that continues. But I think a 5-year commitment in that industry is really a long-time commitment.

Senator SIMPSON. The Chairman is not here.

Senator DECONCINI. Continue on.

Senator SIMPSON. I have one more question, and then if you have more, Dennis——

Senator DECONCINI. I would like to have that light turned off permanently.

Senator SIMPSON. Yes, it would be well if it were turned off. It keeps buzzing too, which is a very bizarre thing. [Laughter.]

Let me ask you this. Relocations have been discussed with me since I did choose to cosponsor the DeConcini bill, and that is a concern, certainly. The relocations cited are Dallas to Irving, Tex., the New York Giants to the Meadowlands, the Lions to Pontiac.

Would any of you as mayors, getting to the point of expired leases, and so on, in the future, feel threatened by that type of a relocation to other stadium sites which would be within the same general metropolitan area? At least, that is the way I would observe those relocations to be.

What are your thoughts? Do you feel threatened by that? Yes, Mayor Feinstein?

Mayor FEINSTEIN. Senator, I think the answer would be yes, it is quite possible that that could happen. If I take my city, for example, it is a small city. As I mentioned earlier before you came in, we are trying to build a new stadium; it is difficult.

California is a Proposition 13 State. You have to be innovative in putting together the package. It is extraordinarily costly to do so.

And I think there is no question but that the lease does not offer us the kind of guarantee that is necessary.

I suppose if I carried out the scenario, if the coliseum did not attract another team someday, perhaps Oakland and San Francisco could come into competition.

What this does, in essence, is open a situation, I think, to piracy, and I do not believe that is healthy. It is easy to sit here and say, well, everything will remain constant with our owners from here to eternity. But that is not real life and it is not the life in which we function.

Therefore, the league provides that vote, and that vote then offers the city an opportunity to present their case as well to the league, and I think that is important.

Senator SIMPSON. Yes?

Mayor BERKLEY. Yes, I think any city would be concerned, and justifiably, if the team were to move out of its city and into a suburban area. Yet, at the same time we must recognize that the main intention is to have it in the metropolitan area. That is the No. 1 priority, because it is really the fans from the metropolitan area that support the team; it is not just the central city or a combination of two or three cities in a community. I think there are 92 cities within our metropolitan area.

But it would be of some concern. It would also depend on the circumstances with regard to the existing lease and things of that nature. But I must say that I feel very confident. In Kansas City, we are very fortunate. We have the Truman Sports Complex with Arrowhead Stadium in it. We have a twin-stadium arrangement with a separate facility for baseball and football. It is considered one of the most attractive, best designed facilities in the country. So, I feel very confident that there will be a desire to renew the lease when the time comes.

We are also geographically located in the city of Kansas City, Mo., but near the suburban areas. So, it is an excellent combination and an excellent location, and I think we are well situated.

But it is something that is important to the metropolitan areas, and in every single instance in the last several decades, except the Oakland to Los Angeles move, the metropolitan area has been retained as the site of the team, and that is the important factor.

Senator SIMPSON. Yes, Mayor?

Mayor CALIGUIRI. Senator, I will not be repetitious. I agree with the two mayors' statements. I might add that we have just signed a 29-year lease with the two teams, including the Steelers. So, we feel quite confident that the stadium and the team will remain, in fact, right in the downtown area.

If I might, with your permission, Senator—we have in the audience the owner of the Pittsburgh Steelers for the last 50 years, Mr. Art Rooney, and if Art would just stand up.

[Mr. Art Rooney stood.]

Senator SIMPSON. We certainly recognize him; yes, sir.

Mayor CALIGUIRI. And, of course, his son, the president, Dan Rooney.

[Mr. Dan Rooney stood.]

Mayor CALIGUIRI. Thank you, Senator.

Senator SIMPSON. Yes. I remember meeting the gentlemen at a reception Senator Heinz had here in the Senate after the Super Bowl triumph. It is nice to see you again.

Mayor HALLOIN. Well, Senator, again I think Green Bay is rather unique, when we talk about a city of only 88,000 population. Certainly, it was difficult for us to build a stadium of 56,000-some seats. I doubt very much that our suburbs of 15,000 apiece are going to consider building a stadium, but we do have the same concern, certainly, about a team moving.

There is pride in that team. It has made Green Bay very recognized throughout the country. I think we are maybe in a different situation, but certainly we do need the protection of revenue sharing and we do need the protection to know that if we make the effort—I think communities have to realize, even as small as Green Bay was, that we do have some responsibility to provide what is needed to keep a professional football team in our community.

We cannot always condemn the league for saying, "You need certain things." We realized that responsibility when we built that stadium, as small as we are. So, it is a two-way affair, but we think we have been treated fairly, and have faith that the league will continue to treat us fairly if they are allowed to do so.

But the challenge now is, through these antitrust regulations, that instead of protecting the consumer, it's almost going against the consumer, who again I say is really the fan in the community that puts up the money to have a team in their city.

Senator SIMPSON. I think that is very true. I am pleased to be able to participate. I think that the average fan would be startled if he realized how much of this issue will be resolved at the Federal congressional level. I think they would be startled, through the years, really, at how much of this lays at the feet of Congress, for various reasons. Indeed, as I say, I think the fans would be a bit startled at that.

Well, I thank you. I will throw it back to you, Dennis. Thank you very much.

Senator DECONCINI. Thank you, Senator Simpson, for joining us, particularly with your heavy schedule on the floor with legislation. We are very pleased that you were here.

I want to pay particular thanks to Chairman Thurmond and Chairman Specter for making the arrangements to have the mayors here today. It did require some juggling of schedules here, roomwise, and what have you. We are very pleased that you took the time to represent your constituents and to bring before the Senate Judiciary Committee your feelings regarding both legislative matters before us, 2784 and 2821. Thank you, mayors.

Mayor BERKLEY. Thank you, Senator.

Mayor CALIGUIRI. Thank you.

Senator SIMPSON. Thank you very much.

Senator DECONCINI. Our last witness is the Honorable William Robertson, commissioner, Los Angeles Memorial Coliseum. Mr. Robertson, we will swear you in. Will you please stand and raise your right hand?

Do you swear the testimony you are about to give the committee is the truth, so help you God?

Mr. ROBERTSON. I do.

Senator DECONCINI. Please be seated. If you have a full statement, we will put it in the record, Mr. Robertson.

STATEMENT OF HON. WILLIAM ROBERTSON, COMMISSIONER, LOS ANGELES MEMORIAL COLISEUM COMMISSION, ACCOMPANIED BY MICHAEL D. ANTONOVICH, MEMBER, LOS ANGELES MEMORIAL COLISEUM COMMISSION

Mr. ROBERTSON. My name is Bill Robertson and I am appearing before you today on behalf of the Los Angeles Memorial Coliseum Commission. I am accompanied by fellow commissioner, Michael D. Antonovich, who is also on the Board of Supervisors of Los Angeles County, which represents 7 million people in Los Angeles County.

I am also the executive secretary of the Los Angeles County Federation of Labor, and we represent 700,000 union members in Los Angeles who are also football fans.

We have come to express our concerns with S. 2784 and to explain to you our experience in dealing with professional sports leagues—in particular, the National Football League. I am not going to read all my testimony. I would like to use some excerpts from it and some comments on the end, and I trust you will permit my colleague to make some comments.

While the coliseum commission is a public body and the facilities are, in effect, public ones, the coliseum commission does not receive any public moneys for its administration, operation, or maintenance. The coliseum and sports arena are operated, instead, by revenues generated solely from events presented in the facilities and without any taxpayer subsidy or other direct public support.

Accordingly, it is imperative, as well as public trust, for the coliseum commission to do everything in its power to see that the coliseum and the sports arena are utilized to their full potential.

In 1946, the coliseum began a relationship with the National Football League when the Rams football club moved to Los Angeles from Cleveland, becoming the first NFL team on the west coast, and establishing the NFL coast to coast for the first time.

Over the years, the coliseum has been a showcase for professional football. During the more than three decades the Rams used the stadium, over $12 million was spent in improvements for fans and players alike. In 1978, the Rams negotiated and signed an agreement with the city of Anaheim to move the ball club out of Los Angeles for a deal that included, among other inducements, 95 acres of public property worth over $25 million that the Rams received for a mere fraction of its market value.

The Rams moved in spite of the fact that they had received excellent fan support for over 30 years and were a very profitable enterprise. During the last 5 years that the Rams were in Los Angeles, they averaged over 60,000 fans a game—a higher figure than the NFL per team average for the same period. In spite of this, the Rams moved out of Los Angeles, not to a convenient suburb, but to an entirely separate community.

In fact, the Department of Commerce identifies Anaheim as a separate metropolitan area from Los Angeles and ranks it as the 20th largest metropolitan area in the United States.

It was this decision by the Rams to desert their home of over three decades, endorsed, by the way, by the National Football League, that was the beginning of the Los Angeles Coliseum's saga to find a replacement team for the coliseum and the people of Los Angeles and which, in part, brings us to this committee today.

For the past 4 years, the Los Angeles Coliseum Commission has been involved in a dispute with the powers that be in the National Football League over the location of a replacement franchise for the Rams in the Los Angeles Coliseum. During this time, we found that the NFL owners are not concerned with the public interest, as they purport to be, but rather are only concerned with maintaining their monopoly control over professional football.

NFL Commissioner Rozelle has maintained that the NFL is the proper determinant of what constitutes the public interest as it applies to professional football. The Los Angeles Coliseum Commission finds such an assertion incredible. By what stretch of the imagination can one expect 28 wealthy individuals to be able to identify what serves the public interest in Los Angeles or Washington, D.C., or anywhere else for that matter?

It might be a plausible assertion if NFL teams were, in effect, community owned and operated, but that is not the case, with the exception of Green Bay, Wis.

The position of the Los Angeles Coliseum Commission is simply that no special interest legislation is needed to define a sports league's status under the antitrust laws, or to control the occasional movement of sports franchises. If Congress endorses S. 2784 or S. 2821, the courts will be powerless under the antitrust laws to dilute the power the NFL can unleash against cities, stadiums, players, other leagues, newspapers and broadcasters, or even against one of its own team members.

There is a far better answer to the NFL's problems than passage of yet another piece of special-interest legislation. All that is required is for the NFL to accept the reality that it is subject to the antitrust laws. There is nothing mysterious or overly complicated about the way the antitrust laws apply to a sports league.

The NFL owners could easily manage their affairs so as to avoid a running afoul of the antitrust laws. If they are chronic violators—and indeed I submit they are—it is only because of their arrogant and willful insistence that they should be above the law.

The proposed legislation is insidious because it purports to be mere internal NFL housekeeping. But it really does severe damage to the public interest. The legislation would prevent independent businessmen from deciding where they do business, depriving them of the most fundamental decision about their own companies, along with their personal property rights.

Sports fans would clearly be the biggest losers over the long run if the owners were handcuffed by this legislation. It is only because teams in other sports were free to move that professional sports spread gradually throughout the country. If the legislation the NFL is pushing had been in effect 20 or 30 years ago, professional sports would never have followed the shift of population to the vast stretches of the South and the West.

Pete Rozelle piously invokes the specter of an Oakland desertion by the Raiders. I wish he had expressed the same concern when the Rams left Los Angeles.

The record in baseball, with much more frequent franchise relocation, shows that vacated areas do not remain vacant for long. Virtually every metropolitan area deserted entirely by baseball—Milwaukee, Kansas City, and Seattle—subsequently got a new franchise within a few years, just as National League fans in New York got the Mets after the Giants and the Dodgers had left for the west coast. Even Washington got a second chance.

One would have to be extraordinarily provincial not to recognize how baseball has been strengthened by being able to follow the post-war shift of jobs and population to the Sun Belt.

Rozelle and his fellow football barons can easily remedy the situation of a vacated Oakland stadium by placing an expansion team there. The NFL wants this legislation because it has lost antitrust suits consistently over the years. The NFL owners have consistently worked to stifle or eliminate economic competition in professional football.

It is not the antitrust laws or inflexible judges and juries who are to blame for the courtroom losses the NFL has sustained. It is the voluntary and consciously made decisions by the NFL owners.

Mr. Rozelle claims that the antitrust laws automatically create a conspiracy out of every decision which the NFL owners make on a group basis. He argues that the antitrust laws thus are endangering the very ability of the NFL to function. This argument is a hobgoblin for little children.

Section 1 of the Sherman Act does require a conspiracy or agreement among two or more people, and it is true that a joint decision by some or all of the NFL owners would satisfy this requirement. But it is misleading to imply, as Mr. Rozelle does, that any agreement automatically violates the antitrust laws. With all of his courtroom experience, Mr. Rozelle surely knows better.

The proof that Mr. Rozelle is crying "wolf" is reflected in the condition of the NFL today. Although it has sustained a string of antitrust defeats in recent years, the NFL owners are stronger and wealthier than ever.

Another hobgoblin raised by Mr. Rozelle is the notion that the antitrust laws will force the NFL to stand helplessly on the sidelines while teams drift around the country like leaves in the wind. This position of Mr. Rozelle is ironic, since several National Football League teams, with the cooperation of Mr. Rozelle, have not been above using the threat of relocation as a bargaining wedge against their current home stadiums. We at the coliseum have had firsthand experience with such activity when the Minnesota Vikings, the Baltimore Colts, and the Miami Dolphins all used a possible relocation to our vacated coliseum as a threat to get better treatment in their existing locales, and in the case of the Vikings, in an entirely new $55 million domed stadium. Incidentally, the money for that was generated by a tax revenue and the taxpayers are paying for that.

The claim that teams will carpetbag around the country is an illusion conjured up by the NFL when it suits the owners' purposes and has no basis in reality. You will not witness a mass exodus of NFL teams for several reasons.

First, out of economic necessity, stadiums always negotiate long-term leases with sports franchises. Most leases have terms of 20 to 25 years.

Second, the departure of the Rams created a unique situation because it left a vacuum in the second largest metropolitan area in the country. It is unrealistic to expect the businessmen who own NFL teams to casually uproot teams from profitable locations and transfer them to Elk Horn, Nev., or Butte, Mont. The fact is that there would be very few franchises because there are very few attractive locations which could support another franchise.

Finally, neither the coliseum nor the Raiders are contending that it would necessarily be unlawful for the NFL owners to devise reasonable and objective standards for the transfer of a franchise. But the National Football League owners are not content to adjust their business practices to fall within the confines of the laws of this country. Instead, they come before this august body requesting exemption from laws to which virtually every business in the United States is subject and, worse yet, to overturn a fairly won, impartial decision.

Commissioner Rozelle regularly penalizes such owners and players for publicly criticizing referees' decisions in football games. It is detrimental to the welfare of the sport. But Mr. Rozelle and his supporters obviously are not above criticizing a judicial referee's decision by arrogantly seeking immunity through the U.S. Congress. We trust that this Congress will blow the whistle on the NFL's effort to evade laws which Congress established to apply to everyone.

To us at the coliseum commission, the greatest public interest will be served by the unfettered reliance on the free enterprise system in a competitive marketplace as it relates to the operations of pro sports franchises. This includes full application of the antitrust laws in sports leagues.

At the Los Angeles Coliseum, we lost a pro football tenant to another stadium that made a better deal, which is precisely how a free economy operates. We have now replaced our former tenant by competing actively in the marketplace. This is the essence of free enterprise. However, the NFL, through S. 2784, wants to inhibit this free enterprise system from working. They propose substituting 28 self-serving individuals as the controlling element in the determination of team location and franchise ownership.

Given a choice between letting the free market decide versus 28 NFL aristocrats, we believe the public interest is best served by a free market economy and the laws of the United States which protect the free enterprise system.

Turning now to S. 2821——

Senator DECONCINI. Mr. Commissioner, I am sorry; our time is running out. You have had about 20 minutes now on a 5-minute label. If you would please summarize and conclude, your full statement will be in the record.

Mr. ROBERTSON. Yes, I understand that.

Senator DECONCINI. I would like to ask a couple of questions.

Mr. ROBERTSON. Yes. I would just like to finalize it by saying that I, as a member of the coliseum commission, have—I was originally appointed when the Rams left for Anaheim by Mayor Tom Bradley, of the city of Los Angeles. They had a football search committee, and I have been working in the vineyards for almost 4 years, pro bono, by the way, and I did it because of a couple compelling reasons.

Our economic stake in that coliseum complex is very important. We have a bond revenue on the sports arena which costs us close to $500,000 a year, and without the revenue from a professional football team, we subsequently will have to go to the taxpayers for assistance.

Another compelling reason is the fact that that coliseum is located in a very distressed area. And I can sympathize with the people in Oakland because we have a comparable situation. It is predominately black, and there is certainly a psychological effect because as these people in that community witness what I described as the white flight of the Rams to almost lily-white Orange County, that had a tremendous effect on those people.

I trust that you would permit my colleague to make some comments.

Senator DECONCINI. Would you introduce yourself, sir?

Mr. ANTONOVICH. Senator, I am Supervisor Michael Antonovich from Los Angeles County, and also a member of the coliseum commission.

Senator DECONCINI. Do you have anything additional to add, Mr. Supervisor?

Mr. ANTONOVICH. Well, I think the point that we have here is that the Oakland Raiders were not attracted to Oakland solely on the basis of the fact that the stadium was going to be built for them.

Testimony was presented in the court case—and this is from the former president of the Oakland Stadium Board; he admitted under oath that the stadium was built as a multipurpose facility and financed by bondholders not in Oakland, or the Bay area, or even in the State of California, but by interests entirely east of the Mississippi River.

In further testimony, this same individual acknowledged the fact that even without Raider revenues, the Oakland stadium complex would still show an annual surplus. In fact, last year they would have made a surplus of $1.6 million even without the Raiders, while the Los Angeles Coliseum has lost approximately $750,000 each year that the Rams have not been playing there.

I might mention that we were outbid by our competitors when Anaheim was able to attract the Los Angeles Rams and, in turn, that was their prerogative. That is the way the market system operates—the free enterprise system. And at that time, the owners of the other NFL football teams did nothing; in fact, they condoned that move after it was done.

Consequently, the only alternative left for us was to try and find another team and, in turn, this was what we were doing. Now, we find that legislation is pending to circumvent the court case that we won, and we feel that ex post facto legislation is unconstitutional and it is a bad way to be legislating.

If the National Football League has no confidence in its position, which is still being argued in judicial forums, I think it is kind of absurd that they try and come here today to win something that the courts would not allow them to have. And we trust that Congress will see that this legislation is what it is—simply an end run around the judicial system.

It is something like George Orwell's classic book, "Animal Farm," where he said: "when all the animals took over, that all animals are created equal. But when it became convenient, the leader slightly altered the rule to read that all animals are created equal, but some are more equal than others."

To me, to contend that the NFL has proposed to become more equal through this pending congressional legislation is not proper.

I might add that the county of Anaheim is separate and distinct—or Orange County—from Los Angeles County. Los Angeles County is larger than 45 of our States. Our budget is larger than 36 of our States. We represent 7.5 million people. We have 82 cities, and approximately 1 million of those people live in unincorporated areas.

The county of Orange does have a football team now—the now Los Angeles Rams. They also have a professional baseball team—the California Angels. Los Angeles has a professional baseball team—the Los Angeles Dodgers. And now we have the Los Angeles Raiders that we agreed to through a contract and that will be coming to the coliseum this season.

To me, to be repeating the mistakes of the past and trying to create a cartel is something like jeopardizing the welfare, we feel, of the citizens of Los Angeles County, just as the Nation has been jeopardized by the politics of OPEC. I think you would find that the cities and countries that have professional football teams would be jeopardized by diluting the antitrust laws that have been enacted for so many years.

And the idea that we cannot compete for other industries is absurd because you can read Business Week or any of the other periodicals to find States, cities, and counties attempting to lure businesses to their localities because they can do a better job.

To me, free enterprise means competition. What we are attempting to do here is to uphold that right, which has been upheld by the Federal courts. So, we plead that this legislation would not be adopted; that the citizens of Los Angeles County be free to abide by the agreement that they have made—the Los Angeles Coliseum Commission with Mr. Davis and the Los Angeles Raiders.

Senator DeConcini. Thank you, commissioners. Let me say I can appreciate, as the generation today says, where you are coming from. I realize your responsibility as commissioners and as elected representatives to do everything you can to enhance your area, and certainly the coliseum.

First, let me ask, Commissioner Robertson, you only addressed part of the bill. What is your feeling regarding revenue sharing? Do you support that part?

Mr. Robertson. I have an appendix B to my statement which clearly illustrates, in my judgment, a survey done between 1970 and 1979, which has the revenue of ticket sales. And we have revenues with gate sharing in contrast to revenues without gate sharing, and it is insignificant, in my judgment.

Senator DECONCINI. Do you support the provision in bill S. 2784 for revenue sharing?

Mr. ROBERTSON. I really think it is, as I said, in my judgment, insignificant. It does not make any difference.

Senator DECONCINI. It does not make any difference from your standpoint, revenue sharing or not?

Mr. ROBERTSON. No, it does not.

Senator DECONCINI. OK. Mr. Robertson, were you on the Los Angeles Coliseum Commission when the commission failed to reach a new lease agreement with the Los Angeles Rams?

Mr. ROBERTSON. Yes, I was. I just came aboard and I was president of that commission that year.

Senator DECONCINI. Your attorney is quoted as saying: "We got into a fight with Anaheim to preserve the tenancy of the Los Angeles Rams and we did a very poor job."

Mr. ROBERTSON. Excuse me. Would you say that over again? We did a what?

Senator DECONCINI. Yes, sir. Your attorney is quoted as saying: "We got into a fight with Anaheim to preserve the tenancy of the Los Angeles Rams and we did a very poor job."

Mr. ROBERTSON. We did a poor job on the competitive negotiations, yes, because we—and I am very candid in saying this—had we attempted to put together a deal in Los Angeles such as the land deal in Anaheim, those of us responsible would have been run out of town on a rail. We just could not do it. That is the political reality in Los Angeles.

Senator DECONCINI. When the Rams elected to move for whatever reasons, were you more upset with the owner or with the NFL, or was it equal?

Mr. ROBERTSON. No; I said publicly I understood the economics. I have been a labor negotiator for close to 25 years. We wished good luck to Anaheim and to the Rams. We went out in that marketplace and tried to get a team, and we did not try to generate a groundswell of criticism against the Rams. We quite possibly made a grave mistake in not doing that.

We did not try to elicit support from people who knew of the plight of the urban community where that coliseum is. But perhaps we were naive. We went out in that marketplace and tried to get a team. We asked the NFL for an expansion team. Had we been granted one when the Rams left, all of this would have been academic. We would not be here today.

Senator DECONCINI. That was my next question. You were prepared to take a new team, an expansion team, in place of seeking to lure some other existing team?

Mr. ROBERTSON. Yes; that was our priority, most definitely.

Senator DECONCINI. The problem I have myself is I can appreciate the situation that the commissioners and the city officials find themselves in. But I could certainly see this happening to Los Angeles again, and maybe because Los Angeles is the great city that it is and has the resources it has, it will always be able to lure some team, whether it is Green Bay, Cincinnati, or someplace else.

If Phoenix, Ariz., should be able to get Mr. Davis to move to Phoenix or to Memphis, or what have you, I do not think that is fair to the fans, without somebody voting on it and somebody having some participation in it.

Maybe my legislation, S. 2784, is not the total answer, but it seems to me that it is important that somebody have some ability to protect those people. Let us assume that the Raiders stay there in Los Angeles for 10 years and you have 10 beautiful, glorious years, and then some other attractive offer comes along and they move.

I do not think this decision should be solely that of that owner, and no one can say, "Wait a minute. Los Angeles has invested a lot here; at least have a vote and have some expression of whether or not there is some community responsibility."

Mr. **Robertson**. Senator, I respectfully disagree with you. We have built-in protections with the term of the lease. But equally important in this case to the city or county of Los Angeles and the coliseum commission, we have executed an agreement which provides that the luxury boxes which are to be built there—if, for any reason, the Raiders left, that would become the property of the Los Angeles Coliseum Commission, and I think that is very excellent collateral.

Going back to the statement you made—10 glorious years, I think you said, or something like that—flourishing or glorious years in Los Angeles—I find that individuals and businesses operate from the view of economics. With 10 good years there, they are not going to go seeking another site.

The Los Angeles area, including Orange County, is very attractive to sports franchises, and I think that is illustrated by the fact that the California Angels baseball team and the Los Angeles Dodgers draw well over 5 million fans a year.

Senator **DeConcini**. But is it not true that the Oakland Raiders had 12 very successful years, and yet they elected to move?

Mr. **Robertson**. Yes.

Senator **DeConcini**. So, is it not very possible that something will be attractive and the Raiders might elect to move again?

Under the court decision, they can do that now, but is there not some responsibility by that team owner to you and certainly to the fans who made them the success that they may be?

Mr. **Robertson**. Quite candidly, Senator, I have some mixed emotions on that. I believe in a free enterprise system. I see plants closing and moving, but under the laws of this country, they have every right to do so. They move for economic reasons. They move to right-to-work States where the labor costs are lower for other reasons.

Senator **DeConcini**. Do you not see a difference between a professional football team and an electronics firm or steel industry?

Mr. **Robertson**. No. They are all——

Senator **DeConcini**. You do not think the fans involvement and the public emotion involved with support of the Los Angeles Rams, or now the Los Angeles Raiders, versus, say, Honeywell or Motorola or General Electric is very different?

Mr. ROBERTSON. I see a difference, and it weighs on the other side. I see much more distress and discomfort to those people who are terminated when a plant moves.

Senator DECONCINI. You have talked about the jury verdict a little bit in your statement. Is it true that the California Supreme Court has ruled that the city of Oakland can keep the Raiders in Oakland through eminent domain?

Mr. ROBERTSON. They have not ruled that. The legislation which was passed by the California Legislature, in my judgment, was poorly structured. All that the supreme court said was they have a right to a trial to prove the merits of that.

Senator DECONCINI. They ruled that there is a basis for a trial——

Mr. ROBERTSON. A trial; that is correct.

Senator DECONCINI [continuing]. Whether or not there is a public interest to have eminent domain?

Mr. ROBERTSON. Yes, and they denied a temporary injunction.

Senator DECONCINI. Is the coliseum in any way trying to change the California legislation as it relates to that interpretation of the Supreme Court of California?

Mr. ROBERTSON. Yes, because we like to see sound legislation in our State, and we would like to see a revision of that legislation up to standards that would be to the benefit of everybody in the State, yes.

Senator DECONCINI. Mr. Robertson, does this situation not go back to the long-standing feud between northern California and southern California?

Mr. ROBERTSON. Well, obviously, there are parochial interests. Testimony was given today that there are labor unions in northern California who favor having the Raiders back in Oakland, and I can understand this.

But about a feud—I do not know. We recently had a feud on water back there, and we lost that decisively.

Senator DECONCINI. I thank you, gentlemen, very much.

That will conclude the hearings this afternoon. The committee will be in recess, subject to the call of the chairman.

[Whereupon, at 4:05 p.m., the committee was adjourned.]

[The prepared statement of William Robertson and attachments follow:]

Prepared Statement of William Robertson

Mr. Chariman, Members of the Senate Judiciary,

Good morning, I am Bill Robertson, appearing before you today on behalf of the Los Angeles Memorial Coliseum Commission which joins me in this statement. I am accompanied by fellow Coliseum Commissioner and member of the Los Angeles County Board of Supervisors, Michael D. Antonovich who joins in this statement and is available to answer questions from the committee. We have come to express our concerns with S.2784 and explain to you our experience in dealing with professional sports leagues, in particular the National Football League. For the record and benefit of the committee, a brief explanation might be in order as to the nature of the Los Angeles Memorial Coliseum Commission.

Briefly, the Coliseum Commission is a nine member joint-powers entity representing equally the State of California, the County of Los Angeles, and the City of Los Angeles for the purpose of operating the Los Angeles Memorial Coliseum, an outdoor stadium, and the Los Angeles Memorial Sports Arena, an indoor multipurpose facility. I am one of the State of California representatives on the Commission having been appointed by Governor Jerry Brown in 1977 and reappointed by him in 1979. While I serve part-time as a Coliseum Commissioner, my full-time occupation is executive secretary of the Los Angeles County AFL-CIO. In that capacity I have acquired over two decades of experience in labor-management negotiations. Supervisor Antonovich represents the County of Los Angeles on the Commission having been appointed to the body last December.

While the Coliseum Commission is a public body and the facilities are in effect public ones, the Coliseum Commission does not receive any public monies for its administration, operation or maintenance. In fact, both the Stadium and arena were originally built without the use of taxpayer dollars and have never had to burden the public treasury to operate. The Coliseum and Sports Arena are operated instead by revenues generated solely from events presented in the facilities and without any taxpayer subsidy or other direct public support. Accordingly, it is imperative, as well as a public trust, for the coliseum Commission to do everything in its power to see that the Coliseum and the Sports Arena are utilized to their full potential. Operation of these facilities in this vein will continue the tradition of the Coliseum and the Sports Arena not being a burden to the taxpayers of Southern California - a goal that the Coliseum Commission is dedicated to.

In 1946 the Coliseum began a relationship with the National Football League when the Rams Football Club moved to Los Angeles from Cleveland, becoming the first NFL team on the west coast and establishing the NFL coast-to-coast for the first time.

Shortly after the Rams established residence in the Coliseum, the NFL pro bowl game was revived in 1951 at the stadium where it was staged annually for the next 21 years before the NFL started rotating the game around the country. The Los Angeles Coliseum still holds the pro bowl attendance record of 72,250 fans set in 1959.

Over the years the Los Angeles Coliseum has been a showcase for professional football. During the more than three decades the Rams used the stadium, over $12 million was spent in improvements for fans and players alike.

In 1978, the Rams negotiated and signed an agreement with the city of Anaheim to move the ball club out of Los Angeles for a deal that included, among other inducements, 95 acres of public property worth over $25 million that the Rams received for a mere fraction of its market value. The Rams moved in spite of the fact that they had received excellent fan support for over three decades and were a very profitable enterprise.

During the last five years they were in Los Angeles, the Rams averaged over 60,000 fans a game -- a higher figure than the NFL per team average for the same period. During that time the Coliseum paid for or reached agreements causing nearly $2.5 million worth of improvements to be made in the stadium. In short, the Rams played in a stadium with great fan support and one that was continually upgraded for the benefit of tenants and spectators alike. In spite of this, the Rams moved out of Los Angeles -- not to a convenient suburb -- but to an entirely separate and indentifiable community. In fact, the Department of Commerce identifies Anaheim as a separate statistical Metropolitan area from Los Angeles and ranks it as the 20th largest SMSA in the United States. It was this decision by the Rams to desert their home of over three decades -- endorsed, by the way, by the National Football League -- that was the beginning of the Los Angeles Coliseum Commission's saga to find a replacement team for the Coliseum and the people of Los Angeles and which in part brings us to this committee today.

For the past 4 years, the Los Angeles Coliseum Commission has been involved in a dispute with the powers that be in the National Football League over the location of a replacement franchise for the Rams in the Los Angeles Coliseum. During this time we have found that the NFL owners are not concerned with the public interest as they purport to be, but rather are only concerned with maintaining their monopolistic control over professional football.

On numerous occassions NFL Commissioner Rozelle has maintained that the NFL is the proper determinent of what constitutes the public interest as it applies to professional football. The Los Angeles Coliseum Commission finds such an assertion incredible. By what stretch of the imagination can one expect 28 wealthy individuals to be able to identify what

SERVES THE PUBLIC INTEREST IN LOS ANGELES, OR WASHINGTON D.C., OR ANYWHERE ELSE FOR THAT MATTER. IT MIGHT BE A PLAUSIBLE ASSERTION IF NFL TEAMS WERE IN FACT COMMUNITY OWNED AND OPERATED, BUT THAT IS NOT THE CASE. IN FACT, THE NATIONAL FOOTBALL LEGAUE'S CONSTITUTION AND BY-LAWS FORBIDS OWNERSHIP OF TEAMS BY COMMUNITIES OR CORPORATIONS.

AS AN ILLUSTRATION OF THE NFL'S DISREGARD FOR THE PUBLIC WELFARE, ONE NEED LOOK NO FURTHER THAN THE RAMS' DECISION TO FLEE THE CITY OF LOS ANGELES, A DECISION RATIFIED AFTER THE FACT BY THE NFL IN A 26-0 VOTE. THE OWNER OF THE RAMS PICKED UP HIS TEAM AND LEFT FOR ONE REASON ONLY -- BECAUSE THE CITY OF ANAHEIM INDUCED HIM WITH A LAND DEAL WHICH INTERNAL DOCUMENTS PRODUCED AT OUR RECENT ANTI-TRUST TRIAL SHOWED WOULD YIELD "ENORMOUS PROFITS" ON THE ORDER OF $21 MILLION.

THE OTHER NFL OWNERS STOOD BY IDLY AND WATCHED WHILE THE RAMS DESERTED THEIR HOME OF 32 YEARS. THE FINANCIAL CONSEQUENCES FOR THE COLISEUM, AS THE OWNERS MUST SURELY HAVE KNOWN, HAVE BEEN SEVERE. THE DEPARTURE OF THE RAMS DEPRIVED THE COLISEUM OF ITS LARGEST TENANT AND REDUCED OUR NET REVENUES BY AT LEAST $750,000 EACH YEAR. OVER THE PAST THREE YEARS THE COLISEUM COMMISSION, WITHOUT THE RAMS AS TENANTS HAS LOST NEARLY $900,000.00.

WE DO NOT OPPOSE THE RIGHT OF THE RAMS TO PULL UP STAKES, NO MATTER WHAT THEIR MOTIVES. WE DO STRENUOUSLY OBJECT WHEN THE NFL MOBILIZED ITSELF TO PREVENT THE COLISEUM FROM GOING OUT INTO THE FREE MARKET TO REPLACE THE RAMS. WHILE THE NFL DID NOTHING TO STOP THE RAMS' MOVE, IT FIRMLY VETOED THE RAIDERS' EFFORT TO TRANSFER FROM OAKLAND.

CONTRASTING THE L.A. COLISEUM'S FISCAL POSITION WITH OUR COMPETITOR IN OAKLAND, ONE FINDS SOME INTERESTING FACTS WHICH THE NFL HAS REFUSED TO ACKNOWLEDGE. CONTRARY TO REPRESENTATIONS MADE ON THE FLOOR OF THE SENATE AND THE HOUSE OF REPRESENTATIVES AND IN SUBCOMMITTEE HEARINGS, THE STADIUM IN

Oakland was not built for the Raiders football team and will continue to be a profitable enterprise even without the Raiders as a tenant. In testimony at our recent trial against the National Football League, the former president of the Oakland Stadium Board admitted under oath that the stadium was build as a multi-purpose facility and financed by bond holders, not in Oakland, the Bay area or even in the State of California, but by interests entirely East of the Mississippi River. In further testimony this same individual acknowledged the fact that even without Raider revenues the Oakland stadium complex would still show an annual surplus. In fact, last year the Oakland stadium would still have made a profit of $1.6 million even without the Raiders, while we lost over $800,000. Representations to the contrary are simply inaccurate, have no basis in fact and are deliberate attempts to misinform this Nation's elected officials for the purpose of this pending legislation. Attached to the written text of my testimony are copies of trial transcripts which confirm these facts which I have just outlined.

As to the Los Angeles Coliseum, as I just mentioned, we've experienced severe financial losses in the past few years without the benefit of a professional football tenant. When we were out bid by our competitors in Anaheim for the business of the Rams football team we were left with a few alternatives to replace this business. We petitioned the National Football League for consideration of a new team in Los Angeles but this request fell on deaf ears. Consequently our only alternative was to exercise our rights under the free enterprise system and go into the market place to find a replacement tenant for the departed Rams. This we did with the confidence that the intent of the anti-trust laws of the United States were to enhance the free market system and afforded us the opportunity to pursue our business interests in this competitive climate. This assumption

HAS BEEN UPHELD BY FEDERAL COURTS AND AN IMPARTIAL JURY WHICH AGREED WITH US THAT WE HAVE THE RIGHT TO SOLICIT AND ATTRACT BUSINESS AND THAT THE RAIDERS, THE BUSINESS WE ATTRACTED, ALSO HAVE THE RIGHT TO CONDUCT THEIR BUSINESS IN A MARKETPLACE THAT GIVES THEM APPROPRIATE OPPORTUNITIES TO CONDUCT SUCCESSFUL ENTERPRISE.

IN GOOD FAITH, WE EXERCISED OUR LEGAL RIGHTS UNDER OUR SYSTEM, EXPENDING TIME, MONEY AND RESOURCES TO FOLLOW ACCEPTED PROCEDURES TO PROTECT OUR BUSINESS INTERESTS. NOW, HOWEVER, AFTER ALL THIS, AFTER THE JUDICIAL SYSTEM OF THIS COUNTRY HAS ENDORSED OUR POSITION WE FIND THAT OUR OPPONENTS, THE NATIONAL FOOTBALL LEAGUE AND THEIR ALLIES, ARE ATTEMPTING TO CIRCUMVENT THE LAWS OF THIS COUNTRY TO NULLIFY OUR EFFORTS WITH A PIECE OF LEGISLATION WHICH CAN ONLY BE CLASSIFIED AS EXTRAORDINARY. THE RETROACTIVE NATURE OF S.2784 IS AN OBSCENE ATTEMPT TO DEPRIVE US AND THE RAIDERS FOOTBALL TEAM OF A FAIRLY WON JUDICIAL DECISION. THE NATIONAL FOOTBALL LEAGUE OBVIOUSLY HAS NO CONFIDENCE IN THEIR POSITION, WHICH IS STILL BEING ARGUED IN JUDICIAL FORUMS. THEREFORE, THEY COME HERE TO TRY AND WIN SOMETHING THAT THEY WERE NOT ABLE TO IN THE COURTS OF THIS COUNTRY. WE TRUST THAT YOU AND YOUR COLLEAGUES WILL SEE THIS LEGISLATION FOR WHAT IT IS -- SIMPLY AN END RUN AROUND THE JUDICIAL SYSTEM -- AND NOT ENDORSE SUCH A BLATANT EFFORT TO SUPERCEDE THE COURTS OF THIS LAND FOR THE PRIVATE BENEFIT OF A SMALL GROUP OF WEALTHY PROFESSIONAL SPORTS TEAM OWNERS.

THE POSITION OF THE LOS ANGELES COLISEUM COMMISSION IS SIMPLY THAT NO SPECIAL INTEREST LEGISLATION IS NEEDED TO DEFINE A SPORTS LEAGUE'S STATUS UNDER THE ANTITRUST LAWS OR TO CONTROL THE OCCASIONAL MOVEMENT OF SPORTS FRANCHISES. THE ANTITRUST LAWS, CONTRARY TO MR. ROZELLE'S ANGUISHED CRIES, HAVE PROVEN TO BE FAIR AND FLEXIBLE TOOLS THROUGH WHICH THE COURTS HAVE APPLIED THE FUNDAMENTAL POLICIES OF COMPETITION AND FREE ENTERPRISE TO THE SPORTS INDUSTRY.

THIS IS NOT THE FIRST TIME THAT THE NFL HAS COME TO THE CONGRESS INSISTING ON PASSAGE OF WELFARE LEGISLATION FOR THE PRIVATE BENEFIT OF THE 28 MULTIMILLIONAIRES WHO OWN FOOTBALL TEAMS. IN 1961 THIS SAME GROUP CAME TO THE CAPITOL FOR AN ANTITRUST EXEMPTION OF THEIR TELEVISION CONTRACTS. BY THREATENING THAT TEAMS IN SMALL COMMUNITIES MIGHT FOLD UP, THE NFL PERSUADED CONGRESS TO GIVE IT A UNIQUE EXEMPTION WHICH THE OWNERS HAVE PARLAYED INTO A BONANZA WHICH EXCEEDED $2 BILLION IN THEIR RECENT TELEVISION NETWORK CONTRACTS. IN 1966 THE NFL DECIDED TO END THE WAR IT WAS WAGING AGAINST THE ONLY OTHER FOOTBALL LEAGUE IN THE COUNTRY AND TO ACQUIRE THE AFL VIA MERGER. THE NFL CONVINCED CONGRESS TO IMMUNIZE WHAT WOULD OTHERWISE HAVE BEEN A CLEARLY ILLEGAL MERGER, THEREBY BESTOWING ON THE NFL A TOTAL MONOPOLY OVER PROFESSIONAL FOOTBALL.

THE NFL APPARENTLY IS NOT SATISFIED WITH THESE ACHIEVEMENTS AND NOW RETURNS TO THE SCENE OF ITS FORMER TRIUMPH SEEKING TO ERADICATE THE SOLE REMAINING CHECK ON ITS ENORMOUS POWER. HAVING ELIMINATED ITS ONLY COMPETITION AND GUARANTEEING LARGE PROFITS BY ELIMINATING ANY COMPETITION FOR TELEVISION RIGHTS, THE NFL NOW ASKS THIS COMMITTEE TO EXEMPT IT ENTIRELY FROM THE ANTITRUST SCRUTINY OF THE COURTS.

IF CONGRESS ENDORSES S.2784 OR S.2821, THE COURTS WILL BE POWERLESS UNDER THE ANTITRUST LAWS TO DEFLECT THE POWER THE NFL CAN UNLEASE AGAINST MUNICIPALITIES, STADIUMS, PLAYERS, OTHER LEAGUES, NEWSPAPERS AND BROADCASTERS OR EVEN AGAINST ONE OF ITS OWN TEAM MEMBERS.

THERE IS A FAR BETTER ANSWER TO THE NFL'S PROBLEMS THAN PASSAGE OF YET ANOTHER PIECE OF SPECIAL INTEREST LEGISLATION. ALL THAT IS REQUIRED IS FOR THE NFL TO ACCEPT THE REALITY THAT IT IS SUBJECT TO THE ANTITRUST LAWS. THERE IS NOTHING MYSTERIOUS OR OVERLY COMPLICATED ABOUT THE WAY THE ANTITRUST

LAWS APPLY TO A SPORTS LEAGUE. THE NFL OWNERS COULD EASILY MANAGE THEIR AFFAIRS SO AS TO AVOID RUNNING AFOUL OF THE ANTITRUST LAWS. IF THEY ARE CHRONIC RECIDIVISTS, AND INDEED THEY ARE, IT IS ONLY BECAUSE OF THEIR ARROGANT AND WILLFUL INSISTENCE THAT THEY SHOULD BE ABOVE THE LAW.

THE ATTITUDE OF THE NFL OWNERS IS REMINISCENT OF THE KLEPTOMANIAC WHO CAN'T SEEM TO STOP HIMSELF FROM STEALING SO HE DECIDES THAT THE LAWS AGAINST THEFT SHOULD BE REPEALED, OR EVEN WORSE, ENFORCED AGAINST EVERYONE ELSE BUT NOT AGAINST HIM.

THE JUSTIFICATION THE NFL OFFERS FOR ITS PROPOSED EXEMPTION IS THAT THE NFL IS SOME SORT OF PARTNERSHIP, WHICH IS ENTITLED TO DECIDE WHERE ITS SO-CALLED PARTNERS PLAY. THIS "PARTNERSHIP" GAG IS WEARING THIN. IT IS TROTTED OUT BY THE NFL TO DEFEND LAWSUITS, BUT WHEN THE OWNERS ARE NOT TESTIFYING IN COURT, THEY COMPETE VIGOROUSLY WITH EACH OTHER BOTH ON AND OFF THE PLAYING FIELD.

IN A LINE OF UNBROKEN DECISIONS THE COURTS HAVE CONSISTENTLY HELD THAT THE NFL IS AN ASSOCIATION OF 28 INDEPENDENT COMPETITORS. THERE HAS BEEN NO CONFUSION ON THE PART OF THE COURTS ABOUT THIS ISSUE AND THE NFL HAS BEEN ON NOTICE FOR SOME TIME NOW THAT ITS POSITION HAS NO SUPPORT IN THE CASE LAW. THE FACTS CONCERNING THE NFL'S STATUS ARE APPARENT TO ANYONE. THE NFL CONSISTS OF 28 SEPARATE FRANCHISES; EACH CLUB IS SEPARATELY OWNED AND MANAGED. EACH CLUB IS A SEPARATE CORPORATION OR PARTNERSHIP. THE FRANCHISES DO NOT SHARE ANY OF THEIR PROFITS OR LOSSES; NOR DO THEY DIVIDE THEIR OPERATING EXPENSES. THE INDIVIDUAL FRANCHISES DO NOT SHARE THEIR BOOKS AND RECORDS WITH EACH OTHER; IN FACT, THEY CONSIDER THAT INFORMATION TO BE HIGHLY CONFIDENTIAL.

EACH TEAM RUNS ITS OWN AFFAIRS. A TEAM MAKES ITS OWN DECISIONS WITH RESPECT TO TICKET PRICES, PLAYER ACQUISITIONS, PLAYER SALARIES, STADIUM LEASE TERMS, RADIO AND PRE-SEASON TELEVISION CONTRACTS AND THE HIRING OF FRONT OFFICE PERSONNEL.

The NFL teams have agreed to share gate receipts under a 65-35% formula, and the NFL makes much of this fact in trumpeting its status as some sort of partnership. One of the most interesting facts which emerged from our trial in Los Angeles is that this gate-sharing formula is a fraud. If the teams each kept all of their own gate receipts and didn't share at all there would be virtually no difference in the bottom line figures.

Taking the facts as a whole it is plain to all that each NFL franchise is a separate business entity. It is separately owned and seperately run; it keeps its own profits and files its own tax return. Indeed, it is curous that anyone would argue that the Washington Redskins are anything but an idnependent business. Does anyone really think that men like Jack Kent Cook or Edward Bennett Williams are some sort of branch managers or hired hands who work for the league office?

The proposed legislation is insidious because it purports to be mere internal NFL housekeeping, but it really does severe damage to the public interest. The legislation would prevent independent businessmen from deciding where they do business, depriving them of the most fundamental decision about their own companies along with their personal property rights. Sports fans would clearly be the biggest losers over the long run if the owners were handcuffed by this legislation. It is only because teams in other sports were free to move that professional sports spread gradually throughout the country. As late as the 1950's, major league sports was largely confined to the Northeast. The moves of the Giants and Dodgers to the West opened up the country for professional sports.

If the legislation the NFL is pushing had been in effect 20 or 30 years ago, professional sports would never have followed the shift of population to the vast stretches of the South and West.

Pete Rozelle piously invokes the spectre of an Oakland deserted by the Raiders. However, the record in baseball, with much more frequent franchise relocation, shows that vacated areas do not remain vacant for long. Virtually every metropolitan area deserted entirely by baseball -- Milwaukee, Kansas City and Seattle -- subsequently got a new franchise within a few years, just as National League fans in New York got the Mets after the Giants and the Dodgers had left for the West Coast. Even Washington got a second chance. One would have to be extraordinarily provincial not to recognize how baseball has been strengthened by being able to follow the postwar shift of jobs and population to the Sunbelt. Rozelle and his fellow football barons can easily remedy the situation of a vacated Oakland Stadium by placing an expansion team there.

The NFL wants this legislation because it has lost antitrust cases consistently over the years. There is no mystery about the string of defeats the NFL has suffered in federal courts from one end of the country to the other. The NFL owners have consistently worked to stifle or eliminate economic competition in professional football. The owners agreed among themselves not to compete for television revenues. They fought to put the only competing league out of business. They carved up exclusive territories among themselves so they wouldn't have to compete with each other. They conspired among themselves to treat players like chattel.

It is not the antitrust laws, or inflexible judges and juries who are to blame for the courtroom losses the NFL has sustained. It is the voluntary and consciously made decisions of the NFL owners. Mr. Rozelle claims that the antitrust laws automatically create a conspiracy out of every decision which the NFL owners make on a group basis. He argues that the antitrust laws thus are endangering the very ability of the NFL to function.

THIS ARGUMENT IS A HOBGOBLIN FOR LITTLE CHILDREN. SECTION 1 OF THE SHERMAN ACT DOES REQUIRE A CONSPIRACY OR AGREEMENT AMONG TWO OR MORE PEOPLE, AND IT IS TRUE THAT A JOINT DECISION BY SOME OR ALL OF THE NFL OWNERS WOULD SATISFY THIS REQUIREMENT. BUT IT IS MISLEADING TO IMPLY, AS MR. ROZELLE DOES, THAT ANY AGREEMENT AUTOMATICALLY VIOLATES THE ANTITRUST LAWS; WITH ALL OF HIS COURTROOM EXPERIENCE, MR. ROZELLE SURELY KNOWS BETTER.

FOR AN AGREEMENT BY THE NFL OWNERS TO RUN AFOUL OF THE ANTITRUST LAWS, IT MUST BE SHOWN TO HAVE AN ANTICOMPETITIVE PURPOSE OR EFFECT WITHIN A GIVEN MARKET. NO ANTITRUST PLAINTIFF COULD MAKE OUT A CASE MERELY BY SHOWING THAT THE OWNERS GOT TOGETHER AT A LEAGUE MEETING AND AGREED TO DO SOMETHING.

THE ANTITRUST LAWS DO NOT POSE A THREAT TO THE SURVIVAL OR BASIC FUNCTIONS OF THE NFL OR ANY OTHER SPORTS LEAGUE. IT IS OBVIOUSLY NECESSARY FOR THE TEAMS TO COOPERATE IN ADOPTING PLAYING RULES, SCHEDULING GAMES, HIRING REFEREES AND SO FORTH. NONE OF THESE ESSENTIAL FUNCTIONS HAS ANY ADVERSE IMPLICATIONS FOR ECONOMIC COMPETITION AND THEREFORE NONE COULD BE THE SUBJECT OF AN ANTITRUST CHALLENGE. ROZELLE'S CLAIM THAT THE ANTITRUST LAWS CAN BE USED TO ATTACK THE FUNDAMENTAL OPERATIONS OF THE LEAGUE IS A GROSS MISREADING OF THE ANTITRUST LAWS.

THE PROOF THAT MR. ROZELLE IS CRYING WOLF IS REFLECTED IN THE CONDITION OF THE NFL TODAY. ALTHOUGH IT HAS SUSTAINED A STRING OF ANTITRUST DEFEATS IN RECENT YEARS, THE NFL OWNERS ARE STRONGER AND WEALTHIER THAN EVER. THEY JUST RECEIVED A $2 BILLION TELEVISION CONTRACT; THEIR PLAYERS ARE PAID LESS THAN ANY OTHER SPORTS LEAGUE; ATTENDANCE IS AT AN ALL-TIME HIGH AND SO ARE NET PROFITS, AS WE PROVED AT OUR TRIAL. THE ANTITRUST LAWS ARE NOT HAMSTRINGING THE NFL; THEY MERELY PROVIDE SOME REDRESS WHEN THE OWNERS TRY TO SNUFF OUT COMPETITORS.

Another hobgoblin raised by Mr. Rozelle is the notion that the antitrust laws will force the NFL to stand helplessly on the sidelines while teams drift around the country like leaves in the wind. This position of Mr. Rozelle's is ironic since several National Football League teams, with the cooperation of Mr. Rozelle, have not been above using the threat of relocation as a bargaining wedge against their current home stadiums. We at the Coliseum have had first hand experience with such activity when the Minnesota Vikings, Baltimore Colts, and the Miami Dolphins all used a possible relocation to our vacated Coliseum as a threat to get better treatment in their existing locales, and in the case of the Vikings, an entirely new multi-million dollar stadium. Mr. Rozelle has prophesized that the NFL would be taken to task if Mr. Halas decided to move his Bears out of Chicago. Mr. Halas made precisely that threat last year, by publicly considering playing in South Bend, Indiana at the University of Notre Dame. And when that occurred did Mr. Rozelle intervene to protect the public interest and the integrity of the National Football League? The answer is no, because it would have gone against the private interests of one of the NFL owners who was using a threat of relocation to extort a better deal in his home stadium.

The claim that teams will carpetbag around the country is an illusion conjured up by the NFL when it suits the owners' purposes and has no basis in reality. You will not witness a mass exodus of NFL teams for several reasons. First, out of economic necessity, stadiums always negotiate long-term leases with sports franchises. Most leases have terms of 20 to 35 years. The chart attached to my written statement shows the length of current NFL leases. As can be seen, very few teams have the legal option to move even if they were inclined to do so.

SECOND, THE DEPARTURE OF THE RAMS CREATD A UNIQUE SITUATION BECAUSE IT LEFT A VACUUM IN THE SECOND LARGEST METROPOLITAN AREA IN THE COUNTRY. THE EMPTY LOS ANGELES COLISEUM SHONE LIKE A BEACON IN THE NIGHT TO A FAR-SIGHTED ENTREPRENEUR LIKE AL DAVIS. IT IS UNREALISTIC TO EXPECT THE BUSINESSMEN WHO OWN NFL TEAMS TO CASUALLY UPROOT TEAMS FROM PROFITABLE LOCATIONS AND TRANSFER THEM TO ELK HORN, NEVADA OR BUTTE, MONTANA. THE FACT IS THAT THERE WOULD BE VERY FEW TRANSFERS BECAUSE THERE ARE VERY FEW ATTRACTIVE LOCATIONS WHICH COULD SUPPORT BY ANOTHER FRANCHISE.

FINALLY, NEITHER THE COLISEUM NOR THE RAIDERS ARE CONTENDING THAT IT WOULD NECESSARILY BE UNLAWFUL FOR THE NFL OWENRS TO DEVISE REASONABLE AND OBJECTIVE STANDARDS FOR THE TRANSFER OF A FRANCHISE. THE NFL'S RULE GAVE COMPLETE AND UNFETTERED DISCRETION TO THE RAIDERS' COMPETITORS TO VETO A MOVE FOR ANY REASON AT ALL. ALTHOUGH THE RULE WAS FOUND UNLAWFUL IN OUR CASE IT WILL NOT PREVENT THE NFL FROM ADOPTING A LESS RESTRICTIVE AND LEGAL ALTERNATIVE.

BUT THE NATIONAL FOOTBALL LEAGUE OWNERS ARE NOT CONTENT TO ADJUST THEIR BUSINESS PRACTICES TO FALL WITHIN THE CONFINES OF THE LAWS OF THIS COUNTRY. INSTEAD THEY COME BEFORE THIS AUGUST BODY REQUESTING EXEMPTION FROM LAWS TO WHICH VIRTUALLY EVERY BUSINESS IN THE UNITED STATES IS SUBJECT, AND WORSE YET, ON A RETROACTIVE BASIS TO OVERTURN A FAIRLY WON, IMPARTIAL DECISION. COMMISSIONER ROZELLE REGULARLY PENALIZES CLUB OWNERS AND PLAYERS FOR PUBLICLY CRITICIZING REFEREES' DECISIONS IN FOOTBALL GAMES AS DETRIMENTAL TO THE WELFARE OF THE SPORT; BUT MR. ROZELLE AND HIS COTERIE OF SUPPORTERS OBVIOUSLY ARE NOT ABOVE CRITICIZING A JUDICIAL REFEREE'S DECISION BY ARROGANTLY SEEKING IMMUNITY THROUGH THE UNITED STATES CONGRESS. WE TRUST THAT THIS CONGRESS WILL BLOW THE WHISTLE ON THE NFL'S EFFORT TO EVADE LAWS WHICH CONGRESS ESTABLISHED TO APPLY TO EVERYONE.

To us at the Coliseum Commission, the greatest public interst will be served by the unfettered reliance on the free enterprise system and a competitive marketplace as it relates to the operations of pro sports leagues. This includes full application of the antitrust laws to pro sports leagues. S.2784 would be an inhibitor to the competitive market economy among stadiums, arenas and communities as well. At the Los Angeles Coliseum we lost a pro football tenant to another stadium that made them a better deal which is precisely how a FREE economy operates. We have now replaced our former tenant by competing actively in the marketplace.

This is the essence of free enterprise. However, the NFL through S.2784 wants to inhibit this free enterprise system from working. They propose substituting twenty-eight self-serving individuals as the controlling element in the determination of team location and franchise ownership. Given a choice between letting the free market decide versus twenty-eight NFL aristocrats, we believe the public interest is best served by a free market economy and the laws of the United States which protect the free enterprise system.

By the admission of NFL Commissioner Rozelle himself, at our recent trial, the NFL owners were not opposed to the move of the Raiders to Los Angeles because of concern for the fans of Oakland, but only because by having the Raiders in Los Angeles it would deprive the league of the opportunity of reaping millions of dollars from the sale of an expansion franchise in L.A. Commissioner Rozelle and his NFL owners are great at giving lip service to the concept of community interest but when one looks at the record one finds a total disdain on their part for community interests and only concern with fattening their already bulging pocketbooks.

The National Football League owners cry that they are burdened with lawsuits. S.2784 would not necessarily decrease

THE NUMBER OF LAWSUITS, JUST THE GROUNDS THAT THEY COULD BE FILED UNDER. WE BELIEVE THAT THE ANTITRUST LAWS, AS THEY EXIST, PROVIDE THE ULTIMATE PROTECTION AND RECOURSE, AND SHOULD NOT BE TAMPERED WITH.

TURNING NOW TO S.2821, WE FIND IT INCREDIBLE THAT THE SENATE OF THE UNITED STATES WOULD EVEN CONSIDER SUCH A BLATANT AND ADMITTEDLY OBVIOUS PIECE OF SPECIAL INTEREST LEGISLATION. THE NFL APPARENTLY IS NOT CONTENT WITH ONLY TRYING TO WIN PASSAGE OF S.2784 TO DEPRIVE THE COLISEUM COMMISSION AND THE RAIDERS OF A FAIRLY WON JUDICIAL VERDICT, BUT ALSO WANTS TO HEDGE ITS BET BY BACKING S.2821 WHICH SPECIFICALLY APPLIES TO OUR UNIQUE SITUATION.

S.2821 IS SIMILAR IN NATURE TO IT'S COMPANION LEGISLATION S.2784 IN THAT IT WOULD DEPRIVE EVERY COMMUNITY, MUNICIPALITY, AND TOWNSHIP OF ANY LEGAL RECOURSE AGAINST THE CAPRICIOUS OR SELFISHLY MOTIVATED DECISIONS OF TEAM OWNERS CONCERNING FRANCHISE RELOCATING. WE AGAIN MAINTAIN THAT COMMUNITY INTERESTS ARE BETTER SERVED BY THE EXISTING ANTITRUST STATUTES, RATHER THAN LEAVING SUCH DECISIONS TO A SMALL GROUP OF INFLUENTIAL AND MONIED NFL TEAM OWNERS WHOSE TRACK RECORD CLEARLY INDICATES THAT THEY ARE NOT CONCERNED WITH LOCAL INTERESTS BUT ONLY WITH THEIR OWN BANK ACCOUNT BALANCES.

SINCE THIS MEASURE OBVIOUSLY ONLY RELATES TO OUR SITUATION CONCERNING THE RELOCATION OF THE RAIDERS FOOTBALL TEAM TO LOS ANGELES, SOME PERTINENT FACTS SHOULD BE INSERTED INTO THE RECORD. FIRST OF ALL, THE RAIDERS' TRANSFER TO LOS ANGELES WILL NOT AFFECT THE BUSINESS INTERESTS OR CONCERNS OF OTHER NFL CLUBS. THE TRIAL RECORD PLAINLY SHOWED THAT THE NFL OWNERS WILL BENEFIT FROM THE RELOCATION OF THE RAIDERS. GATE RECEIPTS FOR ALL THE TEAMS WOULD INCREASE IN THE 92,000 SEAT COLISEUM, AND THE NETWORK TELEVISION PEOPLE ARE EAGER TO HAVE AN NFL TEAM IN THE SECOND LARGEST COMMUNITY IN THE U.S. SECONDLY, THE RAIDERS ARE NOT RUNNING OUT ON ANY COMMITMENT TO THE CITY OF OAKLAND. THEY

FULFILLED ALL THE TERMS OF THEIR LEASE AGREEMENT. AND FINALLY, THE COURTS OF THE UNITED STATES, AFTER TWO LENGTHY TRIALS, WITH ALL PARTIES CONCERNED HAVING BEEN ALLOWED TO ARGUE THEIR POSITION, HAVE DETERMINED THAT THE LOS ANGELES COLISEUM COMMISSION AND THE RAIDERS' ASSERTIONS ARE JUSTIFIABLE.

AS TO REPRESENTATIONS MADE ON THE FLOOR OF THIS SENATE THAT SETTLEMENT OF THIS MATTER WAS NOT POSSIBLE, LET THE RECORD SHOW THAT THE LOS ANGELES COLISEUM COMMISSION WAS ALWAYS AMENABLE TO SETTLEMENT, BUT THE NFL, JUST PRIOR TO THE START OF OUR RECENT TRIAL, VOTED 17-10 IN FAVOR OF SETTLEMENT.

WHILE THE SOLID MAJORITY OF OWNERS WISHED TO SETTLE THE LITIGATION, PETE ROZELLE LITERALLY THREW A TANTRUM, THREATENING TO RESIGN IF THE NFL SETTLED. THE OWNERS CAPITULATED, ANNOUNCING A PHONY 27-0 VOTE AGAINST SETTLEMENT AND ALLOWING ROZELLE TO CARRY OUT HIS PERSONAL VENDETTA AGAINST AL DAVIS.

ROZELLE HAS NOW BROUGHT HIS PERSONAL WAR TO THE HALLS OF CONGRESS. WE ARE CONFIDENT THAT ALL OF YOU WILL RECOGNIZE THE INHERENT UNFAIRNESS OF MR. ROZELLE'S BILL AND REJECT S.2821 AT ONCE.

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, THANK YOU FOR YOUR TIME AND CONSIDERATION OF OUR POSITION.

[From Business Week, Apr. 5, 1982]

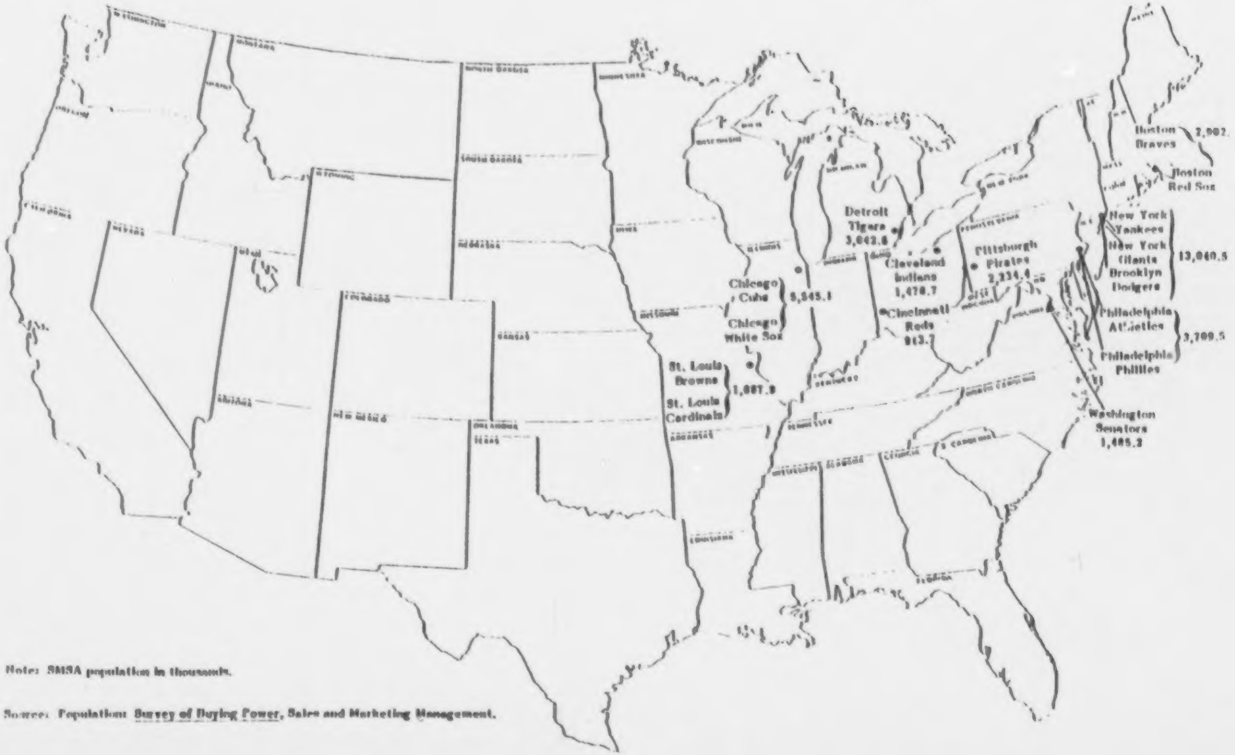
FOOTBALL SHOULD COMPETE

In 1922, the Supreme Court, for reasons best known to itself, decided that baseball was not a business and granted it immunity from antitrust laws. Some congressmen want to end that immunity, but even while they ponder the move, the National Football League has started a drive to win antitrust immunity for itself. About the only thing more ridiculous than that idea would be for Congress to take it seriously.

Not even NFL Commissioner Pete Rozelle, the quarterback of football's lobbying effort in Congress, argues that football is not a buisess. In fact, he positively revels in the NFL's $350 million annual gross revenues and its new $1.9 billion contract for TV coverage rights for professional football games. But, complains Rozelle, "in professional sports, literally every action, every business judgment, and every decision of a league is now subject to attack under the antitrust laws." Rozelle may be amazed to learn that every other business faces exactly that same situation every day and that it is precisely the point of the antitrust laws.

Football's drive does not seem to be winning much support. But the NFL is planning to add two new teams, and talk is heard that they might wind up in Tennessee and Arizona if Senate Majority Leader Howard H. Baker Jr. (R-Tenn.) and Judiciary Committee member Dennis DeConcini (D-Ariz.), who, by no coincidence, represent those States, can be persuaded to shepherd the bill through the Senate. They should resist the temptation. Football teams compete vigorously, even violently, on the playing field, and the businessmen who own them must accept competition in the marketplace.

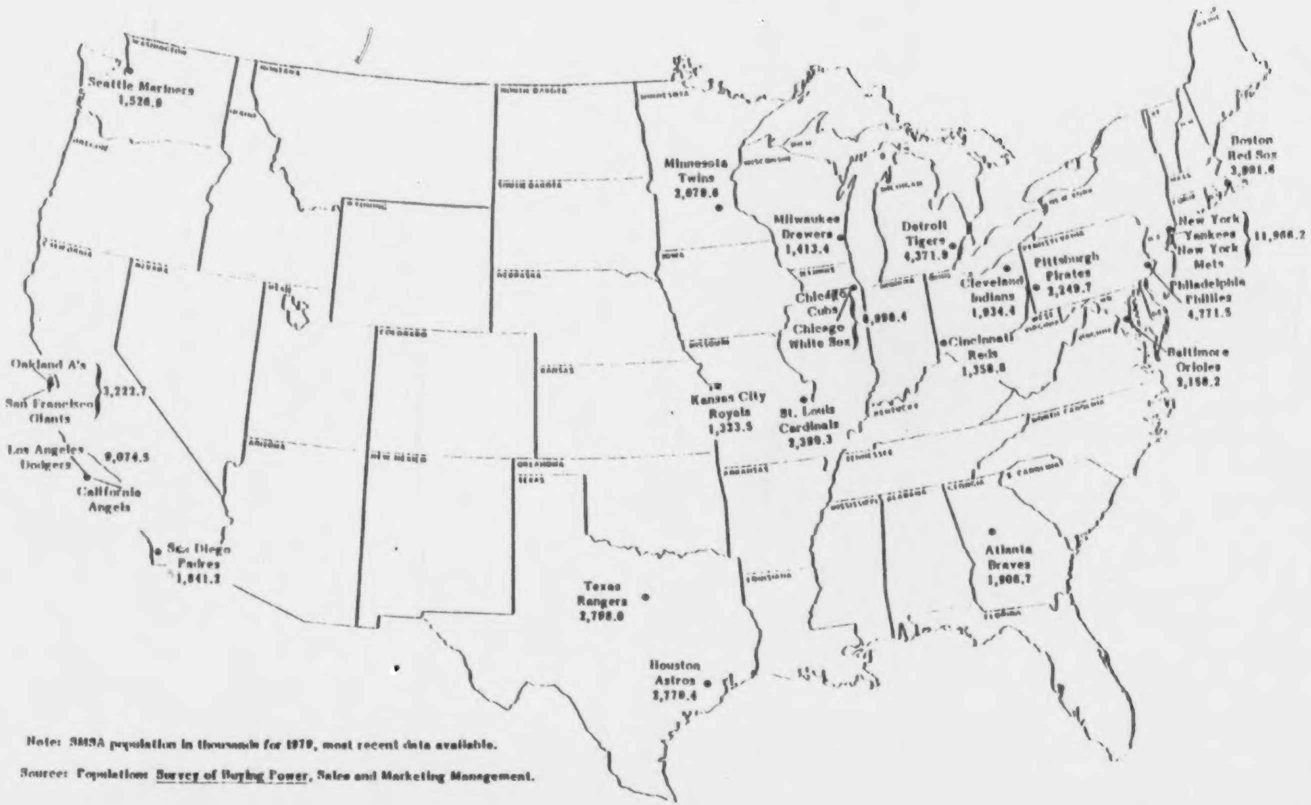
Geographical Distribution of Major League Professional Baseball Teams and SMSA Population
1950


Boston Braves
2,902.
Boston Red Sox
New York Yankees
New York Giants
Brooklyn Dodgers
13,040.5
Philadelphia Athletics
Philadelphia Phillies
3,700.5
Washington Senators
1,485.2
Pittsburgh Pirates
2,234.4
Cleveland Indians
1,470.7
Detroit Tigers
3,042.6
Cincinnati Reds
913.7
Chicago Cubs
Chicago White Sox
5,545.1
St. Louis Browns
St. Louis Cardinals
1,687.3

Note: SMSA population in thousands.

Source: Population: Survey of Buying Power, Sales and Marketing Management.

Geographical Distribution of Major League Professional Baseball Teams
and SMSA Population
1980


Seattle Mariners
1,526.9
Minnesota
Twins
2,070.6
Milwaukee
Brewers
1,413.4
Detroit
Tigers
4,371.9
Cleveland
Indians
1,934.4
Pittsburgh
Pirates
2,249.7
Boston
Red Sox
3,901.6
New York
Yankees
New York
Mets
11,968.2
Philadelphia
Phillies
4,771.5
Baltimore
Orioles
2,158.2
Chicago
Cubs
Chicago
White Sox
6,998.4
Cincinnati
Reds
1,358.8
Kansas City
Royals
1,333.5
St. Louis
Cardinals
2,380.3
Atlanta
Braves
1,908.7
Texas
Rangers
2,798.0
Houston
Astros
2,770.4
Oakland A's
San Francisco
Giants
3,222.7
Los Angeles
Dodgers
9,074.5
California
Angels
San Diego
Padres
1,841.3

Note: SMSA population in thousands for 1979, most recent data available.

Source: Population: Survey of Buying Power, Sales and Marketing Management.

IN THE U.S. DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

TUESDAY, APRIL 6, 1982

Honorable Harry Pregerson, Judge Presiding, *Los Angeles Memorial Coliseum Commission, Plaintiff,* vs. *National Football League,* an unincorporated association, et al., Defendants. Civil No. 78-3523-HP.

ROZELLE—REDIRECT BY BLECHER

Question. Is placing an expansion team in Los Angeles, for example, likely to affect the stream of revenue, I thought that was one of the four business reasons you gave Mr. Lynch——

Answer. The uncertainty, yes.

Question. Why you would not want to have a second team like the Raiders move down here or an expansion team. Is that correct?

Answer. The uncertainty of that, yes.

Question. So that means that because of that uncertainty, we're never likely to get an expansion team?

Answer. No. I think I gave the reasons the various clubs had for voting as they did. And some of them mentioned the television. I don't say all of them. And I don't say it was proven to be a major factor. But the uncertainty of the television situation did trouble some of them.

Question. So we would say television of the factors was mentioned by a few people and it was not a very overpowering reason in your view?

Answer. It was not expressed specifically by a large number, by, say, you know, eighteen or twenty of the clubs. It was mentioned by some of them.

Question. Now, another factor you mentioned was that the franchise down in Los Angeles, should the League ever decide to award it to somebody, would be worth money, is that correct?

Answer. Yes.

Question. And traditionally that money is taken and divided equally among all the club owners?

Answer. Yes.

Question. Now let me see if I understand this. Is it correct in your view that the franchise here in Los Angeles is worth more money than the franchise would be in Oakland?

Answer. I think a franchise in Los Angeles would be worth more than Oakland and—a new franchise in Oakland and a lot of other cities, yes, because of the size of the population, the fact that there are a number of people here with wealth that could afford a franchise, and also the fact that a number of people would like to live here.

Question. This is a pretty good place to play football is what you're saying.

Answer. You could certainly find a number of owners who would like to own a football team here.

Question. Now, if Mr. Davis, now, the Oakland Raiders get to come from Oakland to Los Angeles, what in effect happens economically, if I understand you correctly, is that they get a franchise worth more money than the one they're leaving.

Answer. I think that's true.

Question. And if the League wants to then turn around and sell the Oakland franchise to a new team, they would take less money in to divide among themselves than if they held the Los Angeles one and sold that later.

Answer. I think that Los Angeles would command a very good price for an expansion franchise. Perhaps as much as any city in the country.

Question. And the point of what you're saying to Mr. Lynch is that the Oakland Raiders would get a big benefit by moving their inferiorly priced or lower priced property franchise from Oakland to Los Angeles, and you fellows, the other 27 of you in the League, would wind up with a franchise worth less to sell and distribute among yourselves?

Answer. I think it's——

Question. Is that right or wrong?

Answer. It's right. May I explain?

I think that it's a corporate right of all 28 clubs, if all of them have contributed to the growth, the popularity, of the National Football League, they're entitled to equally share the benefits. That's what I was saying.

Question. And the way this works out, then, is under 4.3 the 22 or 21 owners actually get to decide whether Davis can pick up his business and move it to a better location?

Answer. He can move by a three-quarters vote if he justifies the move, sir.

Question. Or they can decide that he has to stay in the location that's worth less money, even though he has, because his lease expired, an opportunity to better himself?

Answer. That's the way I look at it, right.

Mr. **Blecher**. OK. Thank you, sir

REDIRECT EXAMINATION BY JOSEPH L. ALIOTO

Question. Mr. Rozelle, right on the face of 4.3, if you look at it, just on its face, the League owners can vote as follows, can they not: I am voting against the Oakland Raiders because we want that franchise for ourselves and divvy up the money among ourselves?

If they voted for that reason, that would be perfectly legal under 4.3, right?

Answer. I've never heard of anything like that happening, but it would be legal under 4.3. They have the right to their vote.

Question. In other words, as interpreter of the Constitution, you are saying that on its face, 4.3 would enable eight persons to say we want to divvy that money up among ourselves, and we don't want Al Davis to move, even though all of the requirements of travel, television, scheduling, would be met? And they could do that, right on the face of 4.3, right?

Answer. That is if we later decided to expand to Los Angeles.

Question. Doesn't that look like a conflict of interest to you?

Answer. I think that 28 clubs in the National League helped enhance the League's popularity, and they have a right, they have a corporate right, to share in any benefits that will come to the League through any location and expanding to any location.

Question. Then you are saying that under 4.3 these owners have the right to vote their pocketbook as against Davis' pocketbook, and they don't have to meet any other standard than that if they wanted to, right?

Answer. Yes; but Davis would share equally. He would share with all the other clubs in the League the same amount of money from that sale.

Question. You would agree with me, wouldn't you, Mr. Rozelle, that the L.A. franchise is worth at least $20 million more than a new franchise in Oakland? You would agree with that, wouldn't you?

Answer. I don't know what a franchise is worth today. You would have to see a sale to determine that. I don't know.

Question. Mr. Rozelle, you have just said in answer to Mr. Lynch's question and Mr. Blecher's question that the Los Angeles franchise is worth a lot more than the Oakland franchise, assuming they could be both new franchises, haven't you just said that?

Answer. Yes. Both expansion franchises, correct.

Question. In your sales that's ever been made of a franchise or of a partial franchise or an owner's interest in a franchise, this has to come right through your hands, that's correct, is it not, since you've been the Commissioner?

Answer. We have received the request for a sale. Yes. We received it and presented it to the league for approval.

Question. And you spoke earlier of the price of a New Orleans franchise, the price of an Atlanta franchise. You already testified about the price of the Tampa Bay franchise, the Seattle franchise, and recently the Denver franchise.

Now, on the basis of all that experience, can't you put a figure on the differential you've admittedly testified to between the value of Los Angeles on the one side and the value of Oakland on the other side? Can't you put some type of a differential to approximate it? Is it between ten and twenty million dollars, for example?

Answer. I would be guessing if I did, Mr. Alioto.

Question. I'm not asking you to guess. I'm asking you to give us your expert opinion on the basis of the total experience you have had in this industry. That's what I'm asking you to do.

In other words, when you say there is a differential, I'm simply trying to get you to give us some range of that difference.

Answer. With the new television contract, I really would have to have a more recent sale. I have said that I think an expansion franchise in Los Angeles would be worth more than an expansion franchise in Oakland.

Question. How much more?

Answer. It would be a wild guess.

Question. What's your wild guess as an expert?

Mr. **Morgan**. I will object to his wild guess. It calls for speculation.

Mr. **Joseph L. Alioto**. All right.

The Court. We don't want any wild guesses out of experts.

BY JOSEPH L. ALIOTO

Question. Give me your best estimate, your best expert estimate, as to what that differential would be.

Answer. I tell you it would be more, but it would be just a wild guess.

Question. All right. We can agree, then, it would be more.

Answer. Expansion franchise in Oakland as against an expansion franchise in Los Angeles, the Los Angeles franchise would be worth more.

Question. Now, do you have any information from any source whatsoever that part of the reason for turning down Al Davis on the move from Oakland to Los Angeles is because you folks wanted the new franchise for yourself?

Answer. No. Because the decision hadn't even been made to . . .

* * * * * * *

TUESDAY, APRIL 27, 1982

NAHAS—CROSS BY ALIOTO

Answer. Industrial properties and golf course, yes.

Mr. HEAFEY. That is all I have.

May I have the time?

The CLERK. One hour and six minutes.

CROSS-EXAMINATION BY JOSEPH L. ALIOTO

Question. Mr. Nahas, it is correct, is it not, that when you built the Oakland Coliseum you built it as a multipurpose—I think I heard you use that expression in your direct testimony.

That's correct; is it not?

Answer. Yes.

Question. As a matter of fact, one of the commitments you made when you went in is that you wouldn't go in unless it was built as a multi-purpose stadium?

Answer. That's correct.

Question. So you have baseball there, and in the arena you have basketball and hockey and rock concerts, and so what you did was build something to do all of those things. That is correct; is it not?

Answer. Yes.

Question. It simply isn't true that you built it just for football. That is obvious.

Answer. We did not. It was our principal motivating factor, however.

Question. Now, then, you made a 20-year lease with the baseball team, didn't you?

Answer. Yes.

Question. And you only made a five-year lease with Mr. Wayne Valley of the Oakland Raiders?

Answer. Yes.

Question. Now, it is also a fact, is it not, that all of the bonds that went to build—all the money, the bond purchases that went to build your Coliseum concept were all people who lived east of the Mississippi River? That is correct, isn't it?

Answer. Mr. Alioto, I would like to clarify that. That was in my previous testimony.

Question. You did testify—let me get it straight first. You did previously testify to that?

Answer. Yes. I did. I would——

Question. Is this statement still true or——

Answer. May I clarify it?

Question. Sure. You may do anything you want on that, if you will do——

Answer. I use "people" in a collective sense. In other words, most of the bonds were in fact bought by institutions, whose headquarters were east of the Mississippi River.

Question. All right. But whatever it was, the bond holders were all residents, either corporate residents or individual residents, east of the Mississippi?

Answer. Yes.

Question. And there were none from Oakland itself? Mr. Wayne Valley, for example, was not one of those who bought the bonds?

Answer. No.

Mr. MORGAN. Object to this on the grounds it is irrelevant. Who cares who holds the mortgage?

Mr. HEAFEY. The issue is who guarantees the funds. That's the city and county.

Mr. JOSEPH L. ALIOTO. That is not an objection; that is argument.

The COURT. The objection is overruled.

Mr. JOSEPH L. ALIOTO. OK.

BY JOSEPH L. ALIOTO

Question. Now, it is also a fact, is it not, if we could look at the—I guess we could look at who the limited partners were.

Counsel identified Mr. Valley as a principal owner of the Oakland Raiders. There is in evidence the . . .

* * * * * * *

NAHAS—CROSS BY ALIOTO

Do you want that also?

Mr. JOSEPH L. ALIOTO. Yes the entire thing.

The CLERK. Radiers Exhibit R-2448, your Honor.

[Whereupon, Raiders Exhibit R-2448 was marked for identification.]

Mr. JOSEPH L. ALIOTO. We will offer it.

Mr. HEAFEY. No objection.

The COURT. Received.

[Whereupon, Raiders Exhibit R-2448 was rec'd in evidence.]

[Slide shown.]

Mr. JOSEPH L. ALIOTO. I will read it aloud.

Ladies and gentlemen of the jury, sorry, we don't have it up—it is on the Coliseum press release. It reads as follows:

"Oakland-Alameda County Coliseum, Inc. President Jack Maltester was the bearer of glad tidings in the City of Oakland and Alameda County officials Friday, March 19, 1982. At the annual presentation luncheon, City Councilman Carter Gilmore and Supervisor Chairman Joe Bort each accepted checks of $1,094,395 for the City and County's respective shares. This marked the fifteenth consecutive year the Coliseum has operated in the black since opening in 1966.

The $2,188,790 total distributed from the Coliseum's 1980-81 fiscal year operation is a record. Maltester cautioned officials, however, that while the Coliseum's net is over $2 million, the City and County's net is just under $700,000. He noted those two bodies had already paid one and a half million dollars (seven hundred fifty thousand each) to retire the outstanding bonds sold to build the Coliseum.

Through October 1981, the City and County have paid $22.5 million towards bond retirement. They have now received back $13,935,176 in net revenue payments plus two million six hundred eighteen thousand in the form of possessory interest taxes paid by the Coliseum. An additional two point seven million is required to be maintained in the Operating Reserve Fund.

Coliseum Executive Vice-president and Chief Executive Officer Ray Ward noted the great number of physical improvements made to the facility during the last fiscal year. He estimated the total value of the improvements at over a million dollars."

BY JOSEPH H. ALIOTO

Question. We go now to the last page, showing the table, and I would like you to follow this table with me, if you would, please, Mr. Nahas.

Answer. I was going to say parenthetically, not bad for the lousiest stadium in the country.

Question. You are a pretty fat cat. That is what we are talking about.

If you would be good enough to look—we will go into that question in a moment. Look under the column "Net Before Taxes."

Can you move it over slightly?

"Net before taxes." You see that, the third column from the right? That is it. Point to it, please.

Now, this begins in the year 1966, and it goes right down to the year 1981. And you will see that your profits, net before taxes, start at 379, 427, 327. Then, when we get up to 1973, we get into the million dollar class, 1.1, 1.6, 2.2, 1.8, 2.1, 1.6, 2.1, 2.3 last year.

Now, it is a fact, is it not, Mr. Nahas, if you take out the rent that you got from the Oakland Raiders in the last two years, you would still be very substantially in the black. That is correct, isn't it?

Answer. No, not substantially. I think we might just—no. Well, let's say, the Raiders last year grossed, I think, gross income from the—don't hold me to this. I am not an accountant—I believe a million two, out of which we probably netted six hundred fifty.

Question. If you took last year, took off that seven hundred thousand, you still have one point six million left last year, right? Two point three million net profit——

Answer. Is that after taxes? Has to be after taxes.

Question. The after taxes is a possessory interest tax.

Answer. Yes.

Question. Eighty-five——

Answer. That goes to school districts and all the various things that get taxes. That is expense, as far as we are concerned. If you want a real analysis, look at the last column.

Question. Let's do it. Instead of being two point three nine eight, it is two point three one three. So if you took six hundred or seven hundred thousand off that, you still have one point six million.

Answer. But the city and county are still $10 million behind.

Question. My answer—correct? That's correct? Even without the Raiders, you made one point six million, without the Raiders, last year?

Answer. That is an assumption, Mr. Alioto. I don't know what the effect would be on the other clubs if the Raiders left. You know, there is certain synergism of success. It could very will result in lower income from the other tenants.

[Slide shown.]

BY JOSEPH L. ALIOTO

Question. You suggested we look at the last column. Let's look at it. Not that much differece, as you go down the line. You start at 379.

Start at 379 in '66, and wind up at two point three one three one seven six. That is after possessory interest taxes.

Now, the possessory interest taxes went to the city and county; right?

Answer. But they go to the school districts, fire department, police department, expenses.

Question. What I am saying is that these possessory taxes—the check is actually made out to the city and the county, and what they use it for is general public purposes?

APPENDIX A

U.S. v. *Yellow Cab Co.*, 332 U.S. 218 (1947); *Kiefer-Stewart Co.* v. *Seagram & Sons, Inc.*, 340 U.S. 211 (1951); *Perma-Life Mufflers, Inc.* v. *International Parts Corp.*, 392 U.S. 134, 141–42 (1968); *Timken Roller Bearing Co.* v. *United States*, 341 U.S. 593, 598 (1951); *Radovich* v. *National Football League*, 352 U.S. 445, 449–52 (1957); *Silver* v. *New York Stock Exchange*, 373 U.S. 341 (1963); *Associated Press* v. *United States*, 326 U.S. 1 (1945); *North American Soccer League* v. *National Football League*, Docket Nos. 80-9153, 81-7003, January 27, 1982, *Linseman* v. *World Hockey Association*, 439 F. Supp. 1315 (D. Conn. 1977); *Robertson* v. *National Basketball Association*, 389 F. Supp, 867 (S.D.N.Y. 1975); *Philadelphia World Hockey Club Inc.* v. *Philadelphia Hockey Club, Inc.*, 351 F. Supp. 462 (E.D. Pa. 1972); *Smith* v. *Pro-Football, Inc.*, 593 F.2d 1173 (D.C. Cir. 1978); *Mackey* v. *NFL*, 543 F.2d 606 (8th Cir. 1976), cert. denied, 434 U.S. 801 (1977); *Los Angeles Memorial Coliseum Commission* v. *NFL* (*"Coliseum II"*), 484 F. Supp. 1273 (C.D. Cal.), rev'd on other grounds, 634 F.2d 1197 (9th Cir. 1980); *Los Angeles Memorial Coliseum* v. *NFL* (*"Coliseum I"*), 468 F. Supp. 154, 164 (C.D. Cal. 1979); *Bowman* v. *NFL*, 402 F. Supp. 754 (D. Minn. 1975); *Kapp* v. *NFL*, 390 F. Supp. 73 (N.D. Cal. 1974), appeal vacated, 586 F.2d 644 (9th Cir. 1978), cert. denied, 441 U.S. 907 (1979); *Tondas* v. *Amateur Hockey Association of the United States*, 438 F. Supp. 310 (W.D.N.Y. 1977); *McCourt* v. *California Sports, Inc.*, 460 F. Supp. 904, 907 (E.D. Mich. 1978), vacated on other grounds, 600 F.2d 1193 (6th Cir. 1979); *Denver Rockets* v. *All-Pro Management, Inc.*, 325 F. Supp. 1049, 1066 (C.D. Cal. 1971).

APPENDIX B.—SHARING OF REVENUES FROM TICKET SALES DOES NOT SUBSTANTIALLY CHANGE 1970–79 REVENUES OF NFL TEAMS

Team	Revenues with gate sharing	Revenues without gate sharing	Percent (loss) or gain due to gate sharing
Los Angeles Rams	$65,870,500	$68,358,800	(3.64)
Miami Dolphins	63,198,500	63,833,800	(1.00)
Washington Redskins	63,146,900	64,341,100	(1.86)
Dallas Cowboys	63,132,800	66,541,700	(5.12)
Oakland Raiders	61,955,900	62,214,500	(.42)
New York Giants	61,505,400	62,871,100	(2.17)
Philadelphia Eagles	61,404,500	62,941,100	(2.44)
Cleveland Browns	60,376,700	62,472,100	(3.35)
New York Jets	59,913,600	60,925,800	(1.66)
New England Patriots	59,712,200	60,799,400	(1.79)
Detroit Lions	59,348,500	60,649,400	(2.14)
Pittsburgh Steelers	58,677,200	56,260,400	4.30
Kansas City Chiefs	58,639,800	59,592,700	(1.60)
Minnesota Vikings	58,594,400	56,655,600	3.42
Buffalo Bills	58,080,000	57,163,600	1.60
Baltimore Colts	58,023,200	56,236,500	3.18
Denver Broncos	57,949,100	57,755,500	.34
Cincinnati Bengals	57,855,300	58,188,400	(9.57)
San Francisco 49'ers	57,453,400	56,407,400	1.85
Atlanta Falcons	57,336,200	57,159,700	.31
Chicago Bears	56,795,800	56,256,700	.94
New Orleans Saints	56,241,600	55,729,000	.92
St. Louis Cardinals	56,134,800	53,789,500	4.36
Houston Oilers	55,393,700	53,898,600	2.77
Green Bay Packers	53,872,700	51,507,300	4.59
San Diego Chargers	53,857,400	51,745,500	4.08

Note: (a) Excludes 1976 expansion teams. (b) Revenues include regular season gate, playoffs and National T.V.

Source: Summary of Attendance Statistics, National Football League, 1979. Oakland Raiders. Broadcasters, August 1979. Inquiry Into Professional Sports, Final Report of the Select Committee on Professional Sports, House of Representatives, January 1977.

APPENDIX C

Length of current leases in years by NFL team

Team	*Years*
Atlanta Falcons	25
Anaheim Rams	35
Baltimore Colts	([1])
Buffalo Bills	25
Chicago Bears	20
Cincinnati Bengals	30
Cleveland Browns	25
Dallas Cowboys	35
Denver Broncos	32
Detroit Lions	30
Green Bay Packers	22
Houston Oilers	9
Kansas City Chiefs	25
Los Angeles Raiders	10
Miami Dolphins	10
Minnesota Vikings	30
New England Patriots	30
New Orleans Saints	10
New York Giants	30
New York Jets	20
Philadelphia Eagles	30
Pittsburgh Steelers	40
St. Louis Cardinals	30
San Diego Chargers	19

Team	Years
San Francisco 49'ers	30
Seattle Seahawks	20
Tampa Bay Buccaneers	10
Washington Redskins	29
Average in NFL	22

[1] Pending negotiations.

Source: NFL Interrogatory No. 9, Plaintiff's First Set of Interrogatories.

PROFESSIONAL SPORTS ANTITRUST IMMUNITY

THURSDAY, SEPTEMBER 16, 1982

U.S. Senate,
Committee on the Judiciary,
Washington, D.C.

The committee met at 10:35 a.m., in room 2228, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman) presiding.

Present: Senators Specter, Biden, DeConcini, and Heflin.

Staff present: Stephen Cannon, Marcy Tiffany, Bruce Cohen, Mary Louise Westmoreland, Jock Nash, Debbie Freshwater, Ed Baxter, Romano Romani, Arthur Briskman, and Kathy Zabrowski.

The Chairman. The hearing will come to order.

Today the committee continues to consider professional sports antitrust legislation. Both S. 2784 and S. 2821 address the question of team movement and its consequences. During the first committee hearing, approximately 1 month ago, I was pleased with the discussion and debate our witnesses generated, and I look forward to more of the same this morning. As I stated when these hearings began, I am committed to a full and fair examination of this legislation, and will work to insure that both proponents and opponents have equal opportunity to present their views.

The committee is fortunate to have such a distinguished group of witnesses today. They have all juggled busy schedules to be with us and, on behalf of the committee, I extend my thanks and appreciation to them.

Some other Senators may have a statement. The distinguished Senator from Arizona?

Senator DeConcini. Mr. Chairman, I do have a statement and I thank the Chairman.

[The prepared statement of Senator DeConcini follows:]

PREPARED STATEMENT OF SENATOR DENNIS DECONCINI

Mr. Chairman, I am pleased that this Committee has scheduled a second day of hearings on S. 2784, the "Major League Sports Community Protection Act" which I have introduced with my Committee colleagues, Senators Heflin and Simpson. Mr. Chairman, I am also pleased to report that we have now been joined by seventeen other Senate cosponsors, and I hope that today's hearings will provide a basis for early action on the bill.

I want to join with the other Members of the Committee in extending a warm welcome to the witnesses who have come to appear before us this morning. I want to extend a particularly warm welcome to Mayor Hance of Phoenix from my own State of Arizona. On behalf of the Committee, I want you to know, Mayor Hance, that we appreciate your coming to Washington to share your views on this vital legislation. I look forward to your testimony, as well as that of the other distinguished witnesses here this morning.

Mr. Chairman, you and other Members of the Committee will recall the testimony last month of Mr. Ed Garvey and Mr. Gene Upshaw of the NFL Players Association. In the course of their testimony, Mr. Garvey and Mr. Upshaw leveled several serious allegations at the League with respect to this legislation. Frankly, I was surprised at the Players Association's position. In drafting S. 2784, it was my express intention to steer clear of all labor-management issues. For this reason, an express disclaimer was included in Section 3 and I quote:

> Nothing contained in this Act shall be deemed to change, determine, or otherwise affect the applicability or nonapplicability of the labor laws, the antitrust laws, or any other provision of law to the wages, hours, or other terms and conditions of

> player employment within any sports league, to any player employment matter within any sports league, or to any collective bargaining rights and privileges of any player union with any sports league. . . .

My record on labor issues speaks for itself. It is a good record, and I am proud of it. But S. 2784 has nothing to do with labor-management relations, and I am deeply distressed that this important legislation has been drawn into the contract negotiations between the NFL Players Association and the League.

Nevertheless, at last month's hearing, Messrs. Garvey and Upshaw made several controversial statements about the NFL that appear to be misleading at best. Mr. Chairman, at this time, I would request that a September 8th letter to you from NFL Commissioner Rozelle responding to several of the points raised by Mr. Garvey and Mr. Upshaw be included in the hearing record. I believe all of the Members of this Committee should have received a copy of this letter. In it the Commissioner presents facts that completely refute the charges made by Mr. Garvey and Mr. Upshaw. For example:

First, Mr. Garvey testified that the NFL Players Association was "not in favor of the Oakland Raiders' moving" to Los Angeles.

FACT: Mr. Upshaw testified in unqualified support of the Raiders' move in the federal court litigation in Los Angeles.

Second, Mr. Garvey and Mr. Upshaw stated that the NFL-player negotiations regarding the establishment of a player drug counseling program stalled because of player opposition to S. 2784.

FACT: In his letter to Chairman Thurmond, Commissioner Rozelle categorically denies any suggestion of a link between those talks and the Players Association's position on S. 2784. He encloses a detailed description of the negotiations with the players on this point which strongly support his denial.

Third, Mr. Garvey suggested that in at least one case the NFL misused congressional statutes in court litigation involving players, and he implied that the NFL would therefore misuse the present legislation, if enacted.

FACT: The decisions in the case to which Mr. Garvey referred confirm that the NFL did not misuse any congressional statute. Moreover, how could anyone misuse S. 2784 with regard to players when all labor-management issues are specifically excluded from the legislation.

These and other misstatements by Mr. Garvey and Mr. Upshaw are refuted and discussed in detail by the Commissioner.

I strongly urge my colleagues on this Committee to study this letter, and I commend Mr. Rozelle for helping to set the record straight on these matters.

Mr. Chairman, I appreciate the opportunity to make these comments this morning and look forward with anticipation to the fine testimony which I know we will receive this morning. Thank you.

The CHAIRMAN. The distinguished Senator from Alabama.

Senator HEFLIN. I have no statement. Let us go on with the hearings.

The CHAIRMAN. Our first witness is the Honorable Margaret Hance, mayor of the city of Phoenix.

Mayor Hance, we are delighted to have you with us. You may proceed with your statement.

STATEMENT OF HON. MARGARET HANCE, MAYOR, CITY OF PHOENIX, ARIZ.

Mayor HANCE. Thank you, Mr. Chairman.

Thank you for the introduction, Senator DeConcini.

I am very pleased to appear this morning before this distinguished committee to discuss legislation introduced by Senators DeConcini, Heflin, and Simpson to protect the interests of communities which support major league professional sports teams.

Mr. Chairman, I join over 40 of my fellow mayors in strong support of S. 2784. The bill recognizes the tremendous economic and emotional ties that develop between professional sports teams and the communities in which they are located and provides a basis for assuring the long-term stability of those ties.

Our citizens in Phoenix are like those of other large cities. They are avid sports fans and have strongly and enthusiastically supported our professional basketball team, the Suns. As one of the Nation's fastest growing cities, we look forward to the prospect that professional teams in other sports will one day soon play in Phoenix.

Mr. Chairman, some might ask why I am here today supporting legislation which would help communities which already have professional sports teams keep them. After all, Phoenix does not have a National Football League team, or a professional soccer team, nor have we been promised one. Why then is this bill in our interest?

For one very simple reason. Once we get a team in any of these other sports—and we are looking primarily at an expansion franchise, we are not looking to steal some other city's team—we want to make sure that necessary public investments in stadiums and other facilities which we could be required to make are protected and that we can keep a team in Phoenix as long as it is well supported by the fans and the local community.

Phoenix is an enthusiastic growing community. We are eager to obtain another professional sports team, and we believe the community will support it. In fact, the Governor's Sports Committee recently recommended that the city of Phoenix and the State of Arizona aggressively pursue the award of a National Football League expansion franchise to our city. This recommendation followed extensive survey research which confirmed that the great majority of our citizens went and are prepared to support an NFL team.

Enactment of S. 2784 is important to us because it will clarify the intent of our Nation's antitrust laws to allow professional sports leagues to enforce commitments by individual teamowners to remain in communities in which they are receiving substantial fan support. It will make it possible for cities such as Phoenix to bid for an expansion franchise. Frankly, without this protection afforded by S. 2784, neither we nor any other city, I would imagine, could responsibly undertake the substantial commitments of public funds necessary to provide the facilities necessary to support a team. No city, and especially today, can afford to take the risk of being placed in the situation in which Oakland now finds itself—with publicly supported stadium bonds to pay off, but no team to generate the necessary revenues.

From a mayor's standpoint, let me emphasize that, as I understand it, the Oakland Coliseum was built specifically for the Raiders based on express commitments given to local public officials by the team and the league to keep the team in Oakland as long as it received the support of the fans. By deserting the city of Oakland after 12 consecutive sellout seasons for a better offer in Los Angeles, the Raiders have left the taxpayers of Oakland with a sizable financial burden. Frankly, it is the realization that each of us could face a similar crisis somewhere down the line that has motivated many mayors to take an active role in this legislation. Our jobs are difficult enough as they are. We need your help to keep them from getting that much tougher.

Let me say, Mr. Chairman, that I am aware that some have criticized this legislation as an unwarranted intrusion into the private economic affairs of teamowners—that Government has no business interfering with decisions on where a team should play. This is an interesting argument, especially to me who is a strong believer in free enterprise, but it seems to me to miss the essential point that the Government is already involved—through the antitrust laws and the courts. Ironically, it was some of the same people arguing most strongly against this legislation who took the first step to get the Federal Government involved in the first instance.

To me, policies which permit individual teamowners to escape freely assumed contractual obligations with other league members are scarcely consistent with free enterprise principles. At its heart, our free enterprise system is founded on principles of mutual respect and recognition of contracts. This is absolutely fundamental to our economic system. Free enterprise does not require the destruction of business partnerships or joint ventures; it does exactly the opposite—it demands that voluntary partnerships and joint ventures be permitted to function on the terms agreed on by the participants. One of the distressing aspects of recent court developments is that in the name of antitrust, courts are rewriting a voluntary NFL partnership agreement, and replacing free enterprise with a regime of Government regulation of league conduct through judicial declaration.

Football is a uniquely American game. It demands keen competition on the field, but encourages sportsmanship and cooperation both on and off the field. Particularly at the professional level, decisions affecting league policies have important effects on fans and communities.

The enactment of this bill would reaffirm longstanding congressional policies in favor of stable team-community ties as well as geographic and competitive balance, and would sharply curb the ability of courts to act as minilegislatures in this important area.

Mr. Chairman, I would like to conclude my prepared remarks at this point by noting that we in Phoenix are confident of our ability to compete with other cities to obtain and support an NFL expansion franchise. We have received no advance promises, nor do we expect to receive any. Our concern is that without S. 2784, we will never have the opportunity even to submit a proposal because neither the league nor cities will be willing to make the necessary financial and other commitments in an atmosphere of continued antitrust uncertainty. I urge your speedy action on this legislation so that Phoenix and all the other potential expansion cities can have a chance.

I appreciate your kindness in allowing me to appear before you this morning, and I would be pleased to answer any questions which you might have.

The CHAIRMAN. Mayor Hance, we are delighted to have you with us and we appreciate your taking the time. I know you are on a tight schedule. You have to meet with the President shortly, I understand.

Let me see if they have any questions over here. I may forgo asking questions, and if I decide to ask any questions, I will submit them for the record.

Senator DeConcini.

Senator DECONCINI. Let me ask for the record if you can tell these fine people what has been the experience with the Phoenix Suns basketball organization in Phoenix as far as economics and fan enthusiasm and community spirit are concerned?

Mayor HANCE. Obviously it has been of great economic benefit to the city of Phoenix, but I think more than that is the emotional experience that we have had with our Suns. I think the highlight of that probably was in 1976. Obviously, emotions run higher when you are in the playoffs. But, nevertheless, we have been in a particularly tough experience in Phoenix. One of our fine reporters had been senselessly murdered. The town was at odds, confused. Things like that do not happen in Phoenix. We were being in the national press. It was kind of a distressing time in our community life.

Through the playoffs, and totally sold out screaming, yelling, hysterics, including myself, fans, I think it brought back the community, brought us together again in a way that nothing else could possibly have done. And I happen to be very proud of the fans. So it was especially rewarding at the last game to see the guards come out to protect Boston as the players left the arena, and they kind of stopped and turned around because all 13,700 of us were standing up applauding their victory as opposed to Phoenix's defeat. It is that kind of spirit that helps a community stay together.

Senator DECONCINI. There is good spirit for the Suns even when they are not in the playoffs.

Mayor HANCE. That is correct.

Senator DECONCINI. Phoenix is the 10th largest city——

Mayor HANCE. The ninth largest.

Senator DECONCINI. You are moving up faster than I remember. I thank you for being here. I know your busy schedule. We appreciate it. Thank you.

The CHAIRMAN. The distinguished Senator from Alabama?

Senator **Heflin**. No. Thank you.

The **Chairman**. We thank you very much for your presence. You go meet with your President and I am sure he will advance you what you want.

Mayor **Hance**. Hearing no objection, I do have time to remain for a few minutes and I want to be sure to hear what my friend has to say.

Senator **Heflin**. I would like to inquire are you going to do the same, Mr. Chairman?

The **Chairman**. Our next witness is Hon. Donald Schaefer, mayor of the city of Baltimore.

Mayor Schaefer, we are glad to have you with us.

STATEMENT OF HON. DONALD SCHAEFER, MAYOR, CITY OF BALTIMORE, MD.

Mayor **Schaefer**. Thank you very much.

First, let me thank you for allowing me this opportunity to appear before the committee.

I was in a great city last year. I went down to Charleston, S.C. I try to leave the city of Baltimore in the late afternoon and go to another city and see what they are doing there. Very impressed. The rehabilitation that you started in 1931 learned that you just do not tear old houses down. Rehabilitate. It was a great experience for me. A fine young mayor down there.

The **Chairman**. We are very pleased to have you visit Charleston. When you are ready to retire, I imagine you will find it a very desirable place.

Mayor **Schaefer**. There was a Mrs. Edmonds that has invited me to do that, and I am thinking very seriously. She has got a couple of houses but you will have to reduce the price a little bit for me.

Let me first apologize for not having a prepared statement. I had prepared one and then I read every bit of testimony that has been given so far. I read your opening statement and I commend you for giving everyone an opportunity to be heard. I heard all the testimony of the Commissioner and all the mayors, and I just listened to the mayor of Phoenix, and that was an outstanding statement.

By the way, now this city does not have a team and it would be very easy for them to say let us not pass this legislation and try to take a team from someplace else and put it in my city. A responsible statement made by the mayor of Phoenix is something that encourages me because all mayors are beginning to understand we are all facing serious problems in our cities and we have got to work together to make it a strong country. So I personally thank you for that.

I thought rather than duplicate the testimony, I will try to give you a little bit of the history that has occurred in Baltimore as far as the team is concerned. Let me start off with a very simple statement and this is my interest in the legislation. It is not very complicated.

I believe that every supported and responsibly financial successful team should not, except in the most extraordinary circumstances, be permitted to relocate outside of the home cities.

Now, that is a very selfish statement, but I firmly believe that.

Baltimore City is a unique place. It is an older city fighting hard for survival. We have done remarkably well in the last few years with the assistance of the Federal Government, the State government, the city government, and the people. We have gotten more national publicity, I guess—as much, let me put it that way, as any other city in the United States. We have worked very hard to make it a great city and it is moving along.

It must have a combination of everything. Not only can it have a good harbor, an aquarium, a science center, it has to have museums, sports teams—it has to have everything to make it what I call a big league city, and that is what we are attempting to do. We need the Orioles, we need the Colts, we need a hockey team to make a total network of a city.

For the past 30 years, the Colts have been a very, very important part of the city of Baltimore. The Colts were one of the outstanding teams in the NFL. Great players. Greatest game ever played when Ameche plunged over the goal line. It was worldwide publicity and, since then, the publicity has gone on and on and on.

Let me just try to stress four points: First, the economic impact on the community; second, taxpayers' money to maintain the stadium and to maintain a team; third, the efforts to support a team; and, fourth, the role of the players in the community. I will tell you what I mean by the role of the players in the community.

First, the economic impact. I look on it as a major industry. I know when you say a major industry, you try to differentiate, is it an entertainment or is it an industry. Let me tell you that the Colts and the Orioles are a major industry in our city. The reason I say that, payrolls, taxes, jobs for senior citizens, jobs for young people, gas stations where people come in and buy gasoline, restaurants and hotels. All those things are commodities that make this a major industry in the city of Baltimore and it is an asset that we are very interested in. We figure that a major league team, such as the Colts, generates about $20 million in activities as far as the city is concerned.

We found that out when there was a strike, a baseball strike, when we lost all of the jobs and all of the things that were necessary to keep the team going. And our people began to see it. So it is an economic stability for our city. So it has a great economic impact on a city to keep it there and keep a stable team there.

Now, I think the city has responsibilities, too. They have responsibilities to the league. I think the responsibility of the team owner is, No. 1, to put the best possible team on the field and have the organization, the organization, whether it is the Colts or the Orioles, whoever it might be, to become part of the community.

I think the players also have a responsibility to become part of the community now, and I will refer to that in a moment.

What is the responsibility of the city? Well, I happen to think that we are responsible for promoting the team. I think it is our responsibility and my responsibility to try in every way possible to get people to go out and support the team, whether they are winning or whether they are losing. Of course, we like to be in first place, but I think it is absolutely essential that there be a partnership between the team and the community and the city, and we have tried to do that and we have done it over a period of years.

We have tried to provide an adequate facility. We have to have community acceptance, police protection, fire protection, all of the things that are necessary.

But the team, in their way, has to provide us with the best team available. Edward Bennett Williams said something that I thought was very fundamental: Teams are held in trust for the cities where they function. And I believe that.

You wonder what does the taxpayer have to say about a team. You know, when the teams are there, it costs a lot to maintain the stadium. It costs a tremendous amount of money to maintain a stadium. We have upgraded the stadium. We have gotten the cooperation of the State with bond issues and we have received the help of Commissioner Rozelle when we went down to the State legislature to get $22 million to renovate our stadium.

Now, the problem with our—if we are not sure if the team will be there next year or the year after that, then we have a worry as to whether we can float the bonds, and we have received great assistance from the commissioner and that is a very important part—that is, the taxpayers have a very, very important part in this.

Let me talk about the players and the responsibility of the players. I happen to think that the players have a responsibility to the community. In the past we have had such players, Johnny Unitas, who has restaurants in the city; Jim Parker who has become a successful businessman in the city of Baltimore; Lenny Moore who is in the city of Baltimore and works in its community service and recently Glenn Dowdy who went into business on Pennsylvania Avenue to help minority kids and others.

So there is a responsibility of not only the city, the taxpayers, the team and the players, but I think the most important thing is the stability of knowing that a team will be in your city if you reasonably support the team, bring the public into the stadium and bring the fans in.

So I strongly recommend the passage of this. I know one thing, and I know you are trying to do this, and that is passage of the bill as fast as you can. Very important. You know, when cities are in a position of not knowing what is going to happen to them week after week or year after year, it is very difficult for mayors, like the mayor of Phoenix and the mayor of Baltimore and other mayors. So we strongly support this legislation.

That is all I really have to say except to answer any questions that you might have. And to, incidentally, to support the testimony made by the other mayors who testified as to the need for teams in cities.

The CHAIRMAN. Mr. Mayor, thank you very much for your presence here and your testimony which adds greatly to the record.

The distinguished Senator from Arizona.

Senator DECONCINI. Mr. Chairman, thank you.

Mayor Schaefer, as you may be aware, in addition to S. 2784, this committee has another professional sports team bill before it and that is 2871, the Professional Football Stabilization Act, introduced by my good friend and colleague, Senator Specter of Pennsylvania. The two bills are different in philosophical approach.

My bill, S. 2784, relies upon a professional sports league to take what I consider more of a long-term look at whether the given community can and will support a given team. It does not permit a team to abandon a community merely because a team does not have community support during a certain period of time.

The Specter bill, on the other hand, as introduced, is more toward the short-term view. In a sense, it takes more of a snapshot of community relations and permits a team to leave the community if the picture is not pretty economically.

Given the ups and downs of the Baltimore Colts over the years, I presume you are more comfortable with S. 2784. I do not want to put words in your statement here, and I would like a response, if you can, as to the difference between the two bills.

Mayor SCHAEFER. 2784 is the bill I support. Now, let me tell you why. Let me start off by saying, Mr. Irsay, the owner of the Colts, is a friend of mine. I like Irsay. Some people—I like him.

There is another side to my liking him. The Colts have been an integral part of the community, as I said, for 30 years. When there was stability of the Colts, the fans supported the team. When the team seemed to possibly be shifting some place else, it caused great consternation with the mayor, to-wit, me. It caused great consternation with the Governor. It caused both of us to be very worried because we knew that the loss of this industry, entertainment, whatever it might be, to the city of Baltimore, to the region, and to the State, would be a tremendous loss. I did not like that period at all.

I do not think that an owner in a way really has a right, and I must say this in all sincerity, has a right to sort of play one city against another in order to identify where he is going to put the team. If we have supported the team, if we have worked very hard, if we have done everything we can to support the team financially, whatever it might be, I think we deserve better than that. I think we should have a team.

Now, we cannot compete against some cities. There are some cities much wealthier than ours. We cannot keep upping the ante to keep a team in.

What my responsibility is is to provide the best facility I can with what resources we have. I am supposed to try to sell tickets, and I am not selling tickets one by one, but I tell our people support our teams and go out, whether we win or lose. But you can only do that if the people in the city feel that next year the team is going to be there. We had the best fans of any city in the United States. They would walk in that stadium and they would rock that stadium, and they will do it again when I am able to go back and say this legislation was passed, and when I am able to say to them that team will most likely be here for a number of years, and the only way we will lose it is if you do not think it is important enough to put people in that stadium. And I predict in a couple of years, 2 at the most, when Kush is finished chasing all the players around and putting that team on the field, you will see that stadium on 33d Street rock again.

Senator DECONCINI. I want to confirm that with coach Kush at the head, we have had the greatest experience at Arizona State University. You will have one great team there. He is an outstanding gentleman and outstanding coach, and I thank you for calling that to the record's attention.

I am sure the mayor wants to add something.

Mayor **Hance**. I want to agree wholeheartedly. He is a very excited coach and does bring a lot of spirit.

In an exhibition game in Phoenix in August, when the humidity was high and I think the temperature was over 100——.

Senator **DeConcini**. I was there and it was over 100 degrees.

Mayor **Hance**. And they sold almost 60,000 tickets on one of the worst nights of the year.

I would also add, why I did not come to oppose any bill, it is my understanding that Senator Specter's bill does not address revenue sharing. I think even though Phoenix is the ninth largest city in the United States, that professional sports belong in small cities, smaller cities, as well as major cities, and I know that it would seem to me some of the smaller cities could not sustain the team, the support, financial or any other thing for the cities, and I believe that to achieve the geographic balance that Congress has sought in the past, that it is necessary for smaller cities to participate also.

Senator **DeConcini**. Mayor Schaefer, with the ups and downs that the Colts have had, what effect, if any, do you feel revenue sharing has had on the stability of maintaining the Colts in Baltimore?

Mayor **Schaefer**. I think it is a major turn upward for us. I think Mr. Irsay recognizes that, talks about it, favors it, and I think it will assist him in staying in the city.

I think the passage of the legislation, revenue sharing, the intent of Congress, our continued support—I think it is fine.

Senator **DeConcini**. Thanks, Mr. Mayor. Please give our best to Mr. Kush. You will see him before we will. Tell him we miss him in Arizona.

Senator **Biden**. Mr. Chairman, I would like to ask the mayor several questions.

The **Chairman**. The distinguished Senator from Delaware.

Senator **Biden**. Mr. Mayor, I guess you read in the morning paper that the court struck down the arrangement the National Collegiate Athletic Association has with regard to television. University of Maryland football is an integral part.

Do you want protection there?

Mayor **Schaefer**. I have not read it, Senator.

Senator **Biden**. Well, it is coming.

I wonder, what do we do now? Does the Congress get into the business of saying we should pass legislation that will allow the NCAA to engage in what the court apparently ruled—have not read the whole decision, just the New York Times—with an antitrust venture, or is it better for—I guess Father Hesburgh wakened this morning a happy man. He is probably the only team in America that could go out—not necessarily because it is the best but it has the widest following of any team in terms of a geographic sense, other than Alabama.

The **Chairman**. What about Clemson? They were No. 1 last year.

Senator **Biden**. The point I am trying to make is this: I do not know why you think you have much more security with the owners making the decision. I agree with everything you have said except for the fact that my vote depends on a franchise for Wilmington, Del. But other than that, I believe in small cities, Mayor.

Without being facetious though, we are in a situation where we are understandably, and I am really undecided on this bill, we are understandably concerned about the plight that form shopping causes for Mayors. I think it is real, genuine.

Bill Green is a close friend in Philadelphia—half of Delaware is part of Maryland and half of Delaware is part of Philadelphia, and Delawareans would be devastated if the Eagles left. But I am not sure if there is any more certainty that Leonard Tose would keep the Eagles in Philadelphia with the way it is now because now it is total caprice of the league. If the league said let us move it, there is not a thing you could do as mayor, nothing at all.

So why do we not have an amendment in this legislation that says that this exemption be granted so that individual owners cannot pick up and leave? Why do we not also have an exemption saying the league cannot make that decision, they have to stay where they are? Why do we not do that?

Mayor SCHAEFER. You know, I do not want to seem like I am always on the defensive, but, you know, when you are right here and right there—they got the Phoenix team and I happen to know the impact on Baltimore. And incidently the Colts have an impact on you.

Senator BIDEN. Sure they do. That is what I said.

Mayor SCHAEFER. I would much rather look at the history of the NFL and the statement that the commissioner has made which, by the way, is a very fine statement, about not moving teams around and trying to maintain stability in the NFL. I will cast my lot with the owners, all of them.

Senator BIDEN. But would you object if I, as a Senator, said owners could not move either—I mean the league could not make that decision other than under certain circumstances?

I asked the commissioner, for example, what are the considerations that the league takes into consideration in determining whether a team can move. Can you give me a copy of that? Are they written down? What are they? What are the criteria?

And he said, well, we make a collective judgment. We all decide what is best for the league.

Well, you know, that is fine now. But what happens when cable breaks through? Technology is changing, changing drastically.

Mayor SCHAEFER. Senator, the great thing about this country is that the mayor of Phoenix and I can come over and ask you to change it again. You see, this is necessary now, right now, and while I know you sit in judgment on long term, the mayor of Phoenix and I live day to day, and what the problem is right now, what happens to teams right now. Now, I am telling you—I just know from my own personal knowledge the upset that we have about the possibility of a move of the Colts.

Senator BIDEN. How about the Orioles? Are the Orioles good citizens?

Mayor SCHAEFER. They are.

Senator BIDEN. Are they as important to Baltimore as the Colts?

Mayor SCHAEFER. All depends on what you are leading me on to.

Senator **Biden**. Mr. Mayor, you are beginning to sound like Al Haig now. That is just a question.

Mayor **Schaefer**. Let me answer what the Orioles are. Edward Bennett Williams is one of the finest team owners that I know. There was no question in my mind that he was going to move to Washington. I believe this. We were able to tell him, Edward Bennett Williams, we need the Orioles in the city of Baltimore, and I will tell you what we will do. We will try to fill the stadium, anything you want, to keep them here, because if you take the Orioles, this is the loss to the community. Edward Bennett Williams listened to us. Edward Bennett Williams, I think, will keep the team there so long, and this is where I agree with what Mr. Rozelle said, that they should have the opportunity to review, and I will take my chances with the total league making the right decision. Edward Bennett Williams—the thing that I worry about with the Colts right now, the players are not part of the community, mainly because they are coming and going. I think when that team is stable again, with players like Unitas and Lenny Moore and Parker and Glenn Dowdy—the Orioles are right now. Eddie Murray saves 500 tickets per game for senior citizens.

Senator **Biden**. Let me be more specific. It seems to me, in a financial sense and in a psychological sense, the Orioles are a very integral part of Baltimore, which happens to be my home city, and they are a very integral part of Delaware. One of the four largest radio stations carries every Orioles game. They are a very, very integral part, just like the Colts are.

What I am getting to is they are totally exempt. Baseball is totally exempt. Now, why? And football is treated differently. I mean, why are you less secure or more secure with a single owner making a decision or the whole league, the American League making a decision? It seems to me—what I am trying to get at, I do not think it makes a whole lot of difference in terms of your security.

Mayor **Schaefer**. I do.

Senator **Biden**. Tell me why it is different.

Mayor **Schaefer**. I can only repeat again the history of the NFL and Rozelle's statement. They have not moved teams for the sake of playing one city against another city in the history of the league. The NFL has been a stable league, and I have faith in the total management of the team—the total team members. I think they are interested in stability. I think they are also now—now that revenue-sharing matter they came forward with keep a team. I feel right now that I would rather have it that way.

Senator **Biden**. Baseball is exempt in these antitrust rules. So the league can get together, conspire, do all the things they want to, and apparently they do. Yet they moved. The Braves moved to Milwaukee. The Brooklyn Dodgers broke Howard Cosell's heart when they moved out of Brooklyn. Washington went to Texas.

Mayor **Schaefer**. But there were reasons for the movement.

Senator **Biden**. What were the reasons?

Mayor **Schaefer**. I am not sure.

Senator **Biden**. But the point is that they were exempt and they conspired and they still moved and now we are acting as though an exemption from antitrust, no matter how big or small, is going to give you more security. And my argument is we have a whole league that is totally exempt and Brooklyn was not secure and Washington was not secure and New York was not secure. They moved. The owners got together and said times have changed, Jack, we got to go. They are going to go where the dollar is. And what I am worried about is in the next 5 years, the financial aspects of sports will be revolutionized. It may be that in 5 years it will be that it will pay the owners to pay people to come to the stands because they will be making so much money on cable and they will not care where the heck the stadium is. That could work out to the advantage of the cities. Then there is no incentive to leave.

On the other side, it could work the other way.

I kind of like the Specter bill myself but I will wait to hear the rest of the testimony. But I am very leery of assuming that good times will continue when those good times are dependent upon management that changes and not dependent on rules and regulations.

Mayor **Schaefer**. Senator, I respect you because you are the Senator and my destiny is in your hands——

Senator **Biden**. I thought you did because I was a great Senator.

Mayor **Schaefer**. Well, if you support the bill, you are a great Senator.

You know, one thing that worries me is we are—the mayor and I are right there affected by something now and it is nice to be able to say that we are going to worry about 5 or 10 years from now. I have got to worry about what happens to Baltimore right now. If that team leaves, you might be directly affected by a higher unemployment rate in the city of Baltimore. You may be affected by many things that happen in the city of Baltimore. So the stability of the city is important now. I happen to think now is the time for this legislation and we can talk about cable 5 years from now.

Senator **Biden**. We agree on the objective. I am just not sure this accomplishes it.

Thank you.

Mayor **Hance**. Could I, Mr. Chairman, add to that. Again the mayor is correct in that he does need this legislation right now. I think the suggestion that further roadblocks be placed, as you suggest, so that it is almost impossible for the owners to make a decision to move a team is not a good one, only in that times do change and there should be reasons allowed under any sort of interpretation of free enterprise that a team can, for extraordinary reasons, move. When you try to put down certain reasons, at least I found in city legislation, they are so wide open to interpretation that you are always involved in litigation.

Another thing that is really bothering the sports universe is the fact that at this point we have conflicting opinions just in the State of Arizona—California, through the Supreme Court decision versus what the Federal court has done, and I think that all professional sports are feeling this kind of malaise because legislation is needed to clarify that.

Senator **Biden**. Good point.

Thank you, Mayors.

The **Chairman**. The distinguished Senator from Pennsylvania.

Senator **Specter**. Thank you.

I shall be very brief because I know Mr. Cosell, our next witness, has a Monday night football game this Thursday.

I just have one question that I would like to address at Mayor Schaefer. Perhaps Mayor Hance would have a response.

Mayor Hance has commented that 2821, my bill, does not deal with revenue sharing, which it does not, because revenue sharing is not a problem at the moment. And when the league has brought to the Senate its concerns, my part was to respond on the narrowest ground, not to deal with the generalized antitrust exemption or consider revenue sharing for the future.

One of the concerns I have about 2784 is the possible interpretation that it may exempt professional football and other sports as to the issue of pay television or cable, which may well be an ultimate answer, but one which I am not prepared to address now, nor do I think we should with 5 years to run, and the sports-watching public will have an enormous interest in that. We could take that up at the appropriate time.

My legislation deals specifically with the problem of the Raiders, and I have left open whether it be applied to other cases.

Mayor Schaefer, my bill would answer your problem today in Baltimore because the Baltimore Colts are not a distressed team. They are making money and they could not move under the provisions of my legislation.

The question I have is why does that not satisfy you at the moment.

Mayor SCHAEFER. Because I am more familiar with the other bill, Senator.

Senator SPECTER. Then I should not prolong the questioning. But I would ask you to take a look at the provisions of my bill because I think you will find they do solve Baltimore's problems today and direct themselves at the long-range philosophical concerns that Senator Biden has brought up, that is, leaving the control more with the fans than the ability of the city to sustain the team as opposed to the league. The league may be perfectly fine but, on the other hand, they may not be perfectly fine. But if the fan support is there, and the bill I have introduced is directed more to the interest of the fans which are more closely allied to the cities, and guaranteeably so, than what a league may or may not do at any given time.

Mr. Chairman, thank you. I shall resist from asking any further questions.

The CHAIRMAN. Thank you very much. We appreciate the presence of you distinguished mayors.

Our next witness is Howard Cosell.

We are pleased to have you with us and you may proceed as you see fit.

STATEMENT OF HOWARD COSELL, ESQ., SENIOR PRODUCER, ABC SPORTS

Mr. COSELL. Thank you, sir.

First, I would like to say it is a privilege to be here. I am very respectful of your invitation.

Second, I would like to add that I am here on my own. My views are absolutely personal and in no way reflect the attitudes, views, or opinions of the American Broadcasting Co. on either of the bills under consideration.

Third, briefly, my qualifications for being here on my own are lodged in my past testimonies before both the Senate and the House. More specifically, on the projected Federal Sports Act of 1972 before the Senate Commerce Committee, that bill having ironically been introduced at the time by then Senator Marlow Cook of Kentucky, and my testimony before the House-Senate Committee on Professional Sports; and, finally, last summer, before the House Subcommittee on Monopoly and Commercial Law under the chairmanship of Congressman Rodino.

Further, on the subject of consequences of franchise removal, I have addressed the Department of Justice in the great hall at the behest of the then Attorney General, Griffin Bell. I have addressed the Annual Convention of the American Bar Association on the subject in New York City in 1979. I have spoken before more than 20 State bar associations on the subject including, as Senator Specter knows, one before the Philadelphia Bar Association on this subject with Mr. Leonard Tose, the owner of the Eagles, among those in attendance.

Finally, I am a visiting member of the faculty of Yale University rendering a course on sports and law in the society, and it appears that I will be going back there for the spring seminar, and included in that course is, and a very important part of it is the whole question of franchises.

The CHAIRMAN. Mr. Cosell, the people in the rear would like to hear what you have to say. Would you please speak a little louder?

Mr. COSELL. Finally, I am an attorney who practiced law in the State of New York for 10 years, and while at the New York University Law Center, was a member of the Law Review editorial staff.

That having been established, I should like to review very briefly, even as Senator Biden touched upon the history of franchise removals in this country.

The genesis is obvious. It is lodged in baseball. The touchstone point, the departure of the most profitable team for the 13 prior years in all of baseball, the Brooklyn Dodgers to Los Angeles. The reason for the departure, the acquisition for free of 295 acres in an area known as Chavez Ravine with the attendant oil rights thereunder. Chavez Ravine, choice acreage, closer to the Bonaventure Hotel in downtown Los Angeles than Time Square to the start of Central Park in New York, which is a matter of 17 blocks.

That having happened, there came the departure, with young people using money borrowed from Illinois banks, buying the Milwaukee Braves, and remember Walter O'Malley said I have to move to Los Angeles to compete with Milwaukee. Milwaukee went to advantage to compete with Los Angeles so they could get a better television contract and, subsequently, there was a move of musical chairs of franchises being played in baseball where owners could act free, exempt from the antitrust laws based on Mr. Justice Holmes' historic decision in 1922 that baseball was in fact intrastate rather than interstate commerce, and with Congress having failed to revoke that exemption, baseball could act, asserted by Senator Biden, at whim and caprice.

The final franchise removal in baseball was when Mr. Short took the Washington Senators to the great metropolis of Arlington, Tex., and since then there has not been a single baseball franchise removal.

It turned then to football, and if one reviews my testimony in 1972 when I supported Senator Cook's Federal Sports Act, I noted that the prepossessing problem then was the impending departure in football of the then New York Football Giants with an unparalleled, or close to it, profit in football. Never a season ticket for sale in Yankee Stadium. Perhaps the greatest strong safety in my lifetime in sports sits behind me. He remembers Yankee Stadium. He wore No. 40 out of the University of Colorado for the Miami Dolphins, the great unbeaten team; executed four interceptions in one game against the mighty, and Dick knows what the Giants meant to New York. Tickets went by way of inheritance only. The Giants, at the same time, in defiance of the free enterprise system in this country, were getting, based upon the merger exemption and the merger, $10 million in payments for "territorial rights." Those were the rights to New York, not East Rutherford, N.J.

That, by my precepts, was the clear intent of that agreement at the time of the merger with its last many exemptions by way of rider from the antitrust laws.

Subsequent to that, there came the Los Angeles removal to Anaheim.

Now, I know something about the history of Baltimore, and in my view Mayor Schaefer is without—without parallel as mayor of a great city in this country. He personally made Baltimore something more than a way station between Philadelphia and Washington.

Senator **Biden**. Philadelphia and Wilmington.

Mr. **Cosell**. Senator Biden, your disposition to remember Wilmington might relate to the Delaware Park Racetrack. Other than that and the fact that Spectacular Bid came back at that track.

But the point is that he took that inner harbor, and it is a thing of beauty, quite comparable to Boston and the Maryland Science Center, under the aegis of the great Johns Hopkins University, is the absolute model for this country. And it is a marvelous thing to see, what has been done with that city.

But the National Football League's history in that city, sir, is another matter, and I look directly at you, Senator Heflin. It is another matter for this reason. First, the late Carroll Rosenbloom traded that franchise in a tax free exchange and gave the Baltimore Colts to Mr. Irsay, who then owned Los Angeles, the Colts in exchange.

Second, after the Rosenbloom removal to Anaheim, there developed a whole new tactic. First, the mere threat of removal, enough to bring a city to its knees. Examples: Baltimore. Irsay went to the great city of Jacksonville. 50,000 people stormed that stadium, screaming we want the Colts. Mr. Irsay said, and we showed it on national television on August 22, on ABC Sports Beat, now this will show the people of Baltimore they got to get off their duffs and do this kind of thing or else.

So they could have been the Jacksonville Colts. But, 2 weeks later, he was in Memphis, and they could have been the Memphis Colts, and then 2 weeks later he was in Los Angeles where he went prospecting around, and they could have been the Los Angeles Colts. A study of the unbiased and objective sports reporting in Los Angeles at that time, because they would take anything they could get, any team—they had a story, 12 reasons was the headline why they should be the Los Angeles Colts.

Now, that was a beginning. There was another situation, Buffalo, N.Y. By my precepts, one of the major cities of this country. First, the taxpayers of Erie County renovated old War Memorial Stadium, at $1.5 million. Then Buffalo, in the very vogue of Mayor Schaefer's delivery before all of you, agreed to build and contracted for a $90 million all purpose stadium. One of the finest, most estimable gentlemen I know, very interested in thoroughbred racing, with a lovely wife, Ralph Wilson and Jane Wilson, said, no, I want my own football stadium. The Erie County taxpayers bought it, $41 million for Rich Stadium, which is a great football stadium, where I will be tonight, and where the Bills might beat the Vikings. Total cost to the taxpayers $1.5 million for the renovation of War Memorial, $90 million in potential damages for the contracts to build the dome, which was never built, and finally, $41 million for Rich Stadium. The mere threat of removal, because Ralph had said if I don't get my stadium, I have got to leave Buffalo.

Next case, the Minnesota Vikings. Tired of playing in the gloom and snow and darkness at Metropolitan Stadium, said, hey, we need a new dome built in the very heart of Minneapolis. Now, some might figure in the priorities and exigencies of our civilization today that there are more essential priorities in the governess of a great municipality, the essential services lodged in fire, police, energy, schools, housing, job opportunities. But, no, the enabling legislation, as the headlines read—it is dome time or doom time. The enabling legislation was passed and now there is the Metro Dome and indeed the Vikings beat the Buccaneers in the opening. And there are also in that dome stadium more than 100 luxury loges providing $3 million plus, nondividable with the visiting team, to go to the Minnesota Vikings, even as the Giants got when they went to New Jersey, not only the 10 million but nearly 70 luxury loges now providing $2 million a year, nondividable with the visiting team.

Now, let me show you how it actually works. I got a call, I was on assignment one day in Los Angeles, and I got a call at the Beverly Wilshire Hotel from one of the most brilliant men I know, the late Carroll Rosenbloom, extraordinary businessman. And he asked me to come over to his home in Belagio Drive in the Bel Air section of greater Los Angeles. I went with my wife, and we sat at poolside with Carroll as he talked in those carefully muted measured tones wearing his great suede slippers, no socks. It was Hollywood. The manicured gabardine slacks, the proper suede belt, the carefully tailored suede sport shirt, the silk ascot to envelop the otherwise open neck. And he tried me on for media size, and he said, Howard, what would be your on-air position if I moved the Rams to Anaheim? I said my position has never wavered; it has been the same before the Senate Commerce Committee, the House

Select Committee, the Rodino Committee. I believe that franchise removal should be countenanced, apart from abridgement of the lease or another extraordinary matter, to the detriment of the tenant, should be predicated only upon the ability to show continuity of economic distress.

But, Howard, O'Malley did it, Mara did it. I can have the best of both worlds. I can have the land, indeed, options at a marvelous price for 95 acres, duly exercised, a subsequent deal with Gannett Realty in Boston, and more than 110 luxury loges producing into the area of $2½ million a year.

I said, Carroll, this just is not right. You asked me my position; you know it. You know where I stand.

But, Howard, it is legal; is it not?

Yes; it is legal, because Los Angeles would take whatever they could get. Los Angeles could not do the simple thing, go into a court of equity. As you know, courts of equity were established initially because there was no adequate remedy as to common law. Adequate remedy here for Los Angeles would be to go into a court of equity, seek an injunction, estop them from moving. They could not prove financial distress. Quite the converse.

But Los Angeles had filthy hands. They had taken the Rams from Cleveland, the Dodgers from Brooklyn, the Lakers from Minneapolis. So they had to take another tack, steal another team, and the whole history of franchise removal from baseball to football is the unseemly result it produces politically. That does not do other than stigmatize our politicians and our whole political process. It pits State against State, city against city, Senator against Senator.

Look back to the late Senator Russell and Senator Proxmire when Milwaukee moved to Atlanta. It was beneath, in my opinion, the dignity of the body.

So I agree essentially with Senator Biden. I am not willing, and this has nothing to do with my love of Monday Night Football—we just got a record opening game share in our new 13-year history last Monday night, and I love that damn game and I love that league.

But that has got nothing to do with my feelings, my background, and my knowledge and my experience about such matters as the judicial process, the question of constitutional law involved in Senator DeConcini's bill. Other questions that relate in the future to revenue sharing which, and if one read a brilliant column by David Israel, who was once a reporter for the Washington Star who now writes cityside for the Los Angeles Herald Examiner, and his spoken feelings about the very matter that Senator Specter does not want to take up now, which I think is understandable. I am not prepared to leave this whole matter to the whim and caprice of an ownership that has in fact contributed, along with baseball, to the very problems that now exist.

Basically that is my position. I support Senator Specter's bill. I believe in those standards and guidelines and yardsticks. The bill itself does not address itself to the thorny issue of retroactivity which, in my mind, produces questions, although his accompanying message to the bill, he does endorse at this point in time retroactivity.

However, on Sportsbeat on August 22, Senator Specter, whom I know to be a distinguished and even brilliant lawyer, was very clear about the fact that he has not finalized his position on retroactivity. Indeed, one of the purposes of these hearings was to hear more about it, and only after the hearings finalize his decision in that regard.

Is that a fair statement, Senator Specter?

Senator SPECTER. Unusual as it is to respond to questions, the answer is "Yes." I had thought that, contrary to Sportsbeat, this would be an occasion where I might ask the questions.

Mr. COSELL. You will have your opportunity, Senator.

Senator SPECTER. Thank you, Mr. Chairman.

Mr. COSELL. Now, finally, I want—I do want to add this. My reservation about retroactivity has nothing to do with either Pete Rozelle or Al Davis. This Senate body was never formed to rectify a feud between the Hatfields and the McCoys. The feud of Rozelle and Davis as individuals goes back to the days of American Football League. It is irrelevant to the higher question of what this body stands for, to the higher question of the constitutional law issues involved. I do not know. I cannot hand down a judicial edict, neither can you, Senator Heflin, Senator Biden, nor you, Senator Specter, whether or not retroactivity would violate in fact due process. We cannot hand down a judicial edict as to whether retroactivity in one given would create a discriminatory procedure that might violate equal protection because once you apply retroactivity to one case, there is the emerging problem of what about the people of Brooklyn, the people of Manhattan, and the people of Milwaukee for the times they were without a team; Kansas City that went to the city of Oakland. The problems are manifold.

And, finally, the ultimate problem about what about our separation of branches of Government.

So there are deeply complex matters here, Senator Heflin, in my view, and I want them resolved by a law made necessary by the very actions of baseball and football and for continuity as set forth in Business Week, the April 8 issue of 1982. Let us once and for all wipe out an anomaly at law, baseball's exemption from the antitrust laws. Let all sports be treated for what they are and for what every business faces every day. That is what the antitrust laws are for. Let them act in open competition and let them take the consequences if they do not meet the laws of the land.

Thank you very, very much.

Senator SPECTER. Thank you very much, Mr. Cosell, for those opening comments. The committee is very grateful to you.

We have been treated to an extraordinary performance.

Senator BIDEN. Do not feel bad. He even says that when I speak.

Senator SPECTER. I say that by way of delivery, not substance. We know where you stand. It is too bad your audience is not larger, like that share on Monday night.

Senator Thurmond, the chairman, had to leave for other commitments and has asked that I propound certain questions to you, Mr. Cosell, which I shall do at this time.

After reviewing your congressional testimony from previous years, and listening to you today, we are in agreement on one thing, the public interest must be protected in professional sports.

A basic question raised by these two bills is who can best insure the public interest is protected.

Several years ago, you testified in favor of a National Sports Commission whose duties would include approving or disapproving franchise movements. Do you still support the idea of such a Commission?

Mr. COSELL. I supported the idea of that Commission because, by my precept, and if you go back to my testimony on page 100 at that time, you will see that I also brought up the question of boxing, and I brought up other sports questions because in boxing you will have a number of terrible things happening, where a man can get knocked out in Connecticut and be licensed to fight in a State somewhere else 2 weeks later, to the detriment of the fighter, his physical safety, and other things.

At that time, the Federal sports bill related to all those embracing matters, and I felt a Federal Sports Commission could also maintain adequate supervision over boxing, which I feel that sport desperately needs.

But here we are dealing in Senator DeConcini's bill with all sports. I think your bill should deal with all sports, sir, and I would feel much better about it. The history of franchise removals is there in hockey. It is there in basketball. And I think yardsticks and guidelines are necessary in those sports, too.

Senator SPECTER. My bill deals only with football, again from the point of view of taking the narrowest approach from the immediate point of view.

Mr. COSELL. I take it that is because of your ultimate concern with violating the historic, and very limited, exemptions lodged in antitrust law.

Senator SPECTER. It is, and my general philosophy of taking the short step at a time to solving the immediate problem before taking the next one.

The next question from the chairman is Senator Specter's bill, my bill, lists specific standards to be met before franchise movement would be permitted. Would you favor adding a general public interest standard and, if so, what other factors do you think a court would determine in determining if a relocation was in the public interest?

Mr. COSELL. I really find that question raises doubts in my mind as to what it really means. What does Senator Thurmond mean by public interest factor?

Senator SPECTER. He may be referring to the equitable standards that you articulated a few moments ago on the dirty hands doctrine.

Mr. COSELL. The answer is although we are both operating here in the area of vagary and folly because we are not certain by definition of what the Senator means, I might be, depending upon the standard lodged and the definition of public interest.

Senator SPECTER. Mr. Cosell, Senator Thurmond acknowledges your being troubled by the effects on pending cases of the DeConcini bill. The committee has recently amended another antitrust bill to give the judge discretion to apply that bill to pending cases.

Mr. COSELL. You speak of S. 997?

Senator SPECTER. The contribution——

Mr. Cosell. 957?

Senator Specter. Yes.

Senator Thurmond's question is would you favor the approach to leave the discretion to the presiding judge as to the applicability to pending matters like the Raiders' move?

Mr. Cosell. Yes, I would. That is consistent with the historical judicial process of this country.

Senator Specter. Counsel has brought to my attention some of your prior testimony where you said baseball, basketball, and hockey are businesses. They should all be subjected to the antitrust laws, and I think there should be a Federal Sports Commission dealing mainly with expedient removal of franchises that defy the public interest.

Mr. Cosell. I stand on that. That is what my summation today before you, sir, and Senator Biden and Senator Heflin.

Senator Specter. I think your testimony is clear on that, sir.

In 1976, continuing with Senator Thurmond's question, you told the House Judiciary Committee that baseball, basketball, and hockey are businesses. They should be subjected to the antitrust—perhaps you have already answered that.

Are you still of that opinion?

Mr. Cosell. Yes.

Senator Specter. Next, Senator Thurmond propounds this question: proponents of this legislation argue that without it professional sports teams will all eventually be drawn to large metropolitan areas and smaller cities, such as Green Bay or Buffalo, will lose their teams.

Do you agree with that conclusion?

Mr. Cosell. No, I do not, sir. That relates now to the separate problem that you have deferred in your mind, Senator, of revenue sharing. Commissioner Rozelle saved professional football and made it the game it is today with revenue sharing. Green Bay was able to compete with Cleveland, with larger cities. Now, the question arises, as Senator Biden brought up, in view of the whole era of new technologies, if Senator DeConcini's bill goes through, and there is blanket exemption from revenue sharing, does that exemption then create a new twist and give the National Football League the opportunity to form its own network, to become producers, exhibitors, and distributors in effect, and to have the kind of monopolistic control that used to exist in the motion picture industry until ruptured by Federal court's edict in 1949.

Now, I agree, sir, with your reasoning that it is premature to even consider that at this point, though it must be carefully, in my view, lodged in the minds of the most august legislative body in the world, the U.S. Senate.

Further, if Senator DeConcini's bill is to go through, I would suggest it could only go through a blanket guarantee that satisfied this legislative body that that would not be attempted 6 years hence, at termination of the current network contracts.

Senator Specter. Senator Thurmond's final question, Mr. Cosell, is Senator DeConcini's bill also expressly authorizes revenue sharing. At committee hearings on this legislation last month, there was much discussion about the connection between revenue sharing and team movement. Specifically Senator Thurmond has wondered what difference it makes where teams were located in if all teams share revenue. If revenue sharing were specifically authorized, do you think it would be necessary to authorize team movement restrictions in the DeConcini and Specter bills?

Mr. **Cosell**. I absolutely do becase the question of deterioration of a community relates to the protection of the community and the taxpayers. That is the core matter that I believe Senator DeConcini and Senator Heflin and you, sir, and indeed the entire committee are concerned with here, and your concern is legitimate, based upon the very history that I have outlined and that concern will not change by revenue sharing alone, because if you go to a larger market, there is much more of an opportunity with a larger stadium to attain the additional inference of income, nondividable with the visiting team, that are lodged in the luxury loge device which has now become a popular device. One of the problems Mr. Dan Rooney, one of the great family owners in American sports, maybe the greatest in my lifetime, the Rooneys in Pittsburgh, one of the problems they faced, and you know something about the problems in Pittsburgh, is competing because Art Hodell, 90 miles away in Cleveland, has 100 plus luxury loges and the Steelers do not, and for a span of years that surplussage of profit can lead to greater personnel being acquired and can lead to a competitive advantage for Cleveland. These are broadly based and complex problems, Senator, and nobody can pretend otherwise because, as I noted in my testimony before Congressman Rodino and his subcommittee, monopoly and commercial law are at a stage in our society where sport is no longer merely a game played within the arena. Sport is a business that invades the law, the politics, the economics, and the sociology of our society and the examples are rife. And one of them, the judgment by the Federal District Court judge in Oakland in which he labeled the NCAA "a classic cartel" and we have not seen the end of that case yet by a long shot.

Senator **Specter**. Mr. Cosell, because of the lateness of the hour, I will not ask any questions on the bill, but I understand your views. But I would like to propound one question myself. It is on a related topic, although not on the button.

There is a tremendous concern as of this moment about the potential legality of a strike in the National Football League, and a question which is on my mind and the minds of many is is there anything with which the U.S. Senate or the Congress could do which would be constructive in averting that potential strike?

Mr. **Cosell**. Well, the League Management Council has called for a Federal mediator. Would it be proper for you then to intervene? The union resisted the Federal mediator on the stated ground that there had been no negotiation to be mediated over.

I find the players' position on percentage of gross untenable. It is clearly a management prerogative. I can see any number of grounds for settlement of this. I do not know how, with propriety, you gentlemen can get into this because now apparently on Tuesday morning there will be a strike called. I think it is ridiculous, unnecessary, and I blame both parties. I think that Mr. Garvey, a long time ago, should have discarded the notion of percentage of gross. Then I think he would have found management ready, willing and able to work on a formula for escalating the salary level, for providing increases, career adjustment compensation, increases in terms of pension benefits, and so on. I think Commissioner Rozelle was totally fair and honest and aboveboard when he said there is a lot of money to be carved up, based on the network contract. I think it is time the parties get together. I think they are getting together tomorrow morning. I do not know how, with propriety you can get into it.

Senator SPECTER. There is no legislative role but only the potentiality on the mediation of issues, if that is proper.

Mr. COSELL. I think it is proper for you to offer your services, but then you get into labor mediation, and I am not sure that is a senatorial role. Maybe the "Big Bear" from Alabama can take over. He would do a good job.

Senator SPECTER. Which bear?

Mr. COSELL. Bear Bryant. He would sit in his tower and pass the word down.

Senator BIDEN. We have another bear from Alabama and he does the same thing.

Senator SPECTER. And he is a bigger man.

At this time I will pass to Senator Heflin.

I am going to have to absent myself because I have to go to the Small Business Committee, but I will be back in just a few moments.

Senator HEFLIN. I would like to ask you whether or not you see an area of cooperation by the league turning to the problems of drugs in the National Football League?

Mr. COSELL. Senator Heflin, when you say area of operation, what do you mean, sir?

Senator HEFLIN. I mean do you see an area in which the league, by taking certain action, establishing certain rules, that this would be appropriate?

Mr. COSELL. Yes, I think it would be appropriate, depending upon the extent and exigencies of the problem. I think the league honestly believed in the beginning that it was taking every necessary step to deal with the problem. Then I think they gradually learned that the problem was greater within that particular sport than in the rest of society and, indeed, Commissioner Rozelle suggested to me that I interview Carl Eller, now working for the league, an extraordinary all-pro defensive end through the years with the Vikings and born in Winston-Salem, N.C., which happens to be my own birthplace. The problem was exposed on "Sports Beat" a year ago very fully, and Carl explained why the nature of the game could induce excesses in the drug culture. The league having learned about that, certain owners have taken their own steps. I find that Art Modell, the owner of the Cleveland Browns, has been in the forerunner position in this regard and is taking superb steps in handling drug abuse. I believe that if the extent is great enough, if it is epidemic enough, I believe in urinalysis. Yes; I think the league should take action in this regard. I think they are alert to it and are trying to do it. Whether or not urinalysis would be constitution is another thing. Whether it would defy appropriate protections involving invasion of privacy is another thing. That I cannot answer.

Senator **Heflin**. Do you see if they were to take any such action that it would run contrary to any antitrust provision that would exist at all?

Mr. **Cosell**. No, sir, I do not see that question. I see a potential constitutional law question but not antitrust.

Senator **Heflin**. You mentioned potential of the provisions in the DeConcini bill relating to revenue sharing and that that poses a threat where you could have a monopolistic TV display of games. There has been raised the issue of pay television, that that poses a threat to the players, which I am not sure that I fully understand, assuming that they have the right to negotiate as revenues increase.

But would you elaborate on the dangers of pay television as you see it to the football game—to professional football?

Mr. **Cosell**. Only in terms of the antitrust laws and the past history of the motion picture industry. With regard to the players, that is a separate issue. The players will undoubtedly seek a return, if it goes to pay television, a part of that. Larry Fleisher has already testified to that before the Congress. He is the representative of the NBA players and, of course, baseball is already in a lawsuit with the players who are seeking a percentage of television revenues.

So that is a separate issue and that is a matter to be resolved through bargaining or in the courts of law.

My concern was a different one. Six years hence, in theory, the National Football League, and this relates to antitrust, could establish its own network. It is the sport for our time, for whatever reason. The very ratings share we got last Monday, in the midst of all of this turmoil, problems like the present one you are considering, the drug abuse problem, all of these things spilling out and over, the labor-management problems, still it has not canceled the appetite for the public for this remarkable sport one bit. Six years hence, in my opinion, they would be the totally dominant sport in this country and they owe that, a lot of that, to the leadership of the commissioner, which has been utterly brilliant in his year in/year out leadership of this league.

Now, 6 years hence, what if they say, hey, we have got antitrust exemption, let us form our own network. We will bring in the other sports. They can be part of it but we will be the dominant ones and they will become the producers, exhibitors and distributors in the whole new technology that may be existent 6 years hence, and based upon the temporary nature of cable, in whatever form, they would dominate the industry. That is what happened in the motion picture industry until the Federal court declared it a monopoly, in restraint of trade, and broke it up in 1949.

Senator **Biden**. Would you elaborate on the condition of the motion picture industry prior, if you can? I am not familiar with that.

Mr. **Cosell**. Well, the great motion picture companies got together. There were only a handful of them and they utterly controlled production, exhibition, and distribution. An independent could not get anywhere. Today it is different. Independents are producing some of the greatest movies we have.

Senator HEFLIN. How does that differ from the present day free network television?

Mr. COSELL. If you are suggesting, sir, that the three networks have a monopoly, the answer is yes. But we did not create that and we are in competition every single day. That is why rights acquisition costs are so totally, in my opinion, out of line. Because if we do not buy in, NBC might, CBS might, and indeed the very history of my company, sir, bespeaks of the fact—because we were once the third network until our president of news and sports took over sports and we could buy our way in. And then with his brilliance and leadership, we could become No. 1 in that area of the industry, and he is responsible for that.

Senator HEFLIN. Now, the Federal Communications Commission, which has the responsibility of licensing—would not their laws have to be changed before that fear would come into existence?

Mr. COSELL. With regard to cable?

Senator HEFLIN. With regard to cable TV and the football league being able to produce and to send out their own television system.

Mr. COSELL. I am not qualified to answer that, sir.

Senator HEFLIN. Now, in your analogy of the danger of that, I suppose the only—I mean an analogy that I can foresee is perhaps Ted Turner and the Atlanta Braves today. It is becoming almost a nationwide baseball team and has developed its fans——

Mr. COSELL. If that is true, sir, then the Nation is in sore chagrin based upon recent performance.

Senator HEFLIN. There may be some analogy in that regard.

Let me ask you, you raised constitutional issues and raised the issue of retroactivity. Do you consider the DeConcini bill and its language dealing with retroactivity to be unconstitutional?

Mr. COSELL. No, sir. I cannot make that judgment. My earlier statement said I do not think any of us can make that judgment. I think that is a matter of judicial edict upon study of the situation and determination.

Senator HEFLIN. There have been a number of cases in the U.S. Supreme Court that pretty well indicated that if the law changes, you cannot have retroactivity, and it does not violate the ex post facto—ex post facto is limited to criminal matters. And while I am looking at some decisions indicating that cases are clear that legislatively readjusted rights and burdens is not unlawful solely because it upsets otherwise settled expectations and goes on in effect in the cases they have held that in effect legislative bodies can make retroactive application or change laws, and they do not violate any provision of the Constitution.

Do you foresee that there is a constitutional or legal problem with the retroactivity?

Mr. COSELL. I think it is a thorny issue, sir. I am familiar to a reasonable degree with the kinds of laws you cite. I see other problems here, one of which I have cited, the problem of violation of due process. I think that still exists. I think another problem has to do with restitution and that it might involve equal protection under the laws because of the absence of retribution or restitution to other cities that have been similarly damaged. And, finally, in the ultimate, sir, there could be a question to be decided relative to the very separation of our branches of Government. Having studied the words of Hamilton and Jefferson in the Federalist Papers and having closely studied Marberry against Madison and Chief Justice Marshall's historic opinion, the sanctity of contract is involved here, too.

Now, I have heard characterized the city of Los Angeles as the great takers, but contractual rights have evolved to that city as they have evolved to other cities in past cases of this kind, and that is why Roselle and Davis and their feud do not matter. What Davis did was morally wrong, but what happened in this case was (a) a Federal Court decreed that rule 4.3 of the Constitution was volatilative of antitrust; (b) that based upon what the league had already done in the kind of matter that I have outlined here today, the league was guilty of bad faith. That is what they decided, nothing more nor less than that. I think when you—so that Davis won his case legally, not morally, but legally predicated upon the very actions of the past in part, and that is why I do not think that the actions of the league should be left without standards, yardsticks, and guidelines, and that is the point I made or tried to make.

Senator **Heflin**. There are other interesting cases involved in this issue about the Oakland Raiders. I do not know all about it, but I understand in June of this year the California Supreme Court held that in effect the city of Oakland was entitled, through the use of municipal eminent domain powers, to buy and keep Oakland for the purpose of serving vital public interest in Oakland. This sort of decision was issued under California statutes authorizing municipal actions in the public interest.

Now, as I understand it, Davis and the Los Angeles Coliseum in the California Legislature were seeking retroactive amendment to this statute to overturn that aspect. Now, in reviewing that, it surprises me that the California Supreme Court would say in statutes authorizing municipal actions that the public interest—that they would allow, through eminent domain, the taking of a private business and allow almost condemnation of it which, in effect, would mean that through court action, not nationalize but you would almost get to the point of municipalizing an industry or a business.

Now, if that were to be true, it sort of shocks me, and I would support in that instance a retroactivity statute to prevent such a thing from taking place.

So I suppose that what it comes down to is you have to measure the pros and the cons as to whether retroactivity has to be voted by Congress or by legislative bodies.

Do you agree that it is a matter of trying to weigh?

Mr. **Cosell**. Well, I think there is another way, Senator. I think that that law will be tested as to its constitutionality. Eminent domain at law historically has been a procedure, and I agree with your aghast expression at the idea of municipalizing a business. Historically at law eminent domain has been used for purposes of condemnation of land for purposes of urban renewal. The thought of such a law to me bespeaks the very kind of socialization that is obnoxious to you, sir, and to me. But I cannot speak for the courts on this matter. That will have to be tested under our system of judicial process as to its constitutionality.

What I find interesting is the Supreme Court decision, and yet the Supreme Court refusal to issue an injunction estopping Davis from moving the Raiders to Los Angeles. I find an inconsistency there. They had every right to issue an injunction stopping Davis from moving.

Senator **Heflin**. Thank you.

Senator **Biden**. Thank you.

Mr. Cosell, you are obviously, and I am not being facetious, you are obviously very knowledgeable on the history of the league and American sports in general and on some of the legal questions that are involved.

Let me tell you what my dilemma is and ask you to respond.

First of all, I sometimes wonder about our priorities here in this body. The world is going to hell in a hand basket. We are having trouble deciding whether or not we can control nuclear weapons. We do not have any problem figuring out that we do not know anything about controlling the proliferation of nuclear weapons. The situation in our economy is in trouble and we get involved with a—a significant portion of us get involved with what some could consider a parochial question.

At issue here is the antitrust laws of the United States of America. When you strip it all away, that is supposedly what we are considering, and yet what we all have spoken about, myself included, is the desire, could be characterized as parochial, could be characterized as very national in scope, of protecting the fans, protecting cities, protecting the owners, protecting the players, et cetera, depending on one's perspective.

And the two pieces of legislation before this committee relate to exemptions to a generalized law that we have in this country called antitrust. One of the things that Mayor Schaefer—and I agree with your assessment of him as a mayor; I think he is one of the great mayors of this country. Mayor Schaefer is talking about the tremendous detriment to a community of a team moving. And I pointed out that he may not be any more secure with the owner making that decision of the owners collectively.

But my question begs the question. I wonder, if we get into this thing at all, whether through Senator Specter's bill or Senator DeConcini's bill—do we not have an obligation to deal with other businesses? For example, in Delaware, and it is the same in Philadelphia, which I know well, Senator Specter's hometown, and I am sure it is the same in tens of cities across America, profitable companies are moving because they are blackmailing the cities.

There was one of them, a very profitable company, called the Hercules Corp. a major chemical corporation. They have been in Delaware since its inception, had its headquarters in downtown Wilmington, Del. They were a very vital part of Delaware's and Wilmington's economic base. They began to form shop. They got some Southern States to offer them a lot of things—land, even first-round draft choices, so to speak. They offered them all. And only when we were able to, in the free enterprise system—and the head of the company is a real free enterpriser, only when I was able to—and really one of the things that bothered me most about anything I have done, and I have searched my conscience—when I was able to convince the Carter administration, and that is literally how it happened, to give them a UDAC grant to build a new building at low interest rates to stay in the city, did they stay.

Now, why should we not pass a law, the Specter bill, and say that no corporation can leave a city if, in fact, it says no professional football team. Instead of that, say, "No corporation which has been in—the metropolitan area for 6 continuous years or more shall relocate unless . . ." and then the same provisions. Why should we not do that for all of American business because, as much respect as I have for some of the players behind you, I told some of the players yesterday——

Mr. COSELL. I did not realize that No. 20, Rocky Bleier, who made it impossible for Franco Harris to become a star, was here.

Senator BIDEN. Mr. Walter Mitty was not to become a Senator or President. I wanted to become a professional football player. I even tried to walk on to the New York Giants. Shows you how stupid I am. But then a lot of people try to walk on to this podium and they are not too smart either.

The question is these guys are businessmen. They are businessmen and then athletes. All they talk about is how sport is sport—it is not sport in an historic sense of sport any more. It is a flat-out business. Players are businessmen just like an insurance salesman or a car salesman or a ditch digger. They are the same thing. How in God's name—why should we be up here writing a law, an exemption or anything for a business? Why do we not say all corporations—why is it not the argument that Mayor Schaefer is as concerned about just as serious as it relates to whether not a small profitable manufacturer will move to Alabama because they will promise them a lower tax rate?

Mr. COSELL. May I give you my view of it, Senator?

Senator BIDEN. Please.

Mr. COSELL. First, it somehow smacks of regulation that is obnoxious to the American free enterprise spirit.

Second, why make an exemption of sport? Because, sir, and this is philosophy, sports are out of whack in these United States. And this is philosophy. From the moment a person is born, look to the words of Hammerstein in South Pacific. You have to be taught before it is too late.

In this country, when a person is born, they are taught about the purity of sport. They are taught that sports is Camelot, something separate and apart from real life. They are taught that the game is sacrosanct, as if it were a religious ceremony. They are taught that all athletes are heroes, role models, who frequently in many American homes become surrogate parents, though they have absolutely no capacity by birth, background or training to fulfill that role.

I do not know of a nicer kid in my time than Mickey Mantle. But he was born in Commerce, Okla. He was not educated. He could not possibly fulfill the demands placed upon him in view of the manner in which he was catapulted into prominence and lionized because he could hit, run, and throw a baseball.

When you have sports out of whack that way and thus assuming a disproportionate emphasis on the society so that it invades the psyche of the people of the city—I saw Brooklyn die when the Dodgers left. It was a consequential factor.

For these reasons, for the emotional uplift and escape, as a necessary departure from the insistent travails of daily life itself, for these reasons, sports demands separate consideration before such people as yourselves. I wish I were up there. It was a dream before I end my life to enter this body.

Senator BIDEN. I thought in 1976 you were going to give it a shot.

Last question. I know you are on a tough schedule. It is not a question. I have many more questions but maybe I can submit some of these in writing and pursue them with other witnesses.

I would suggest that maybe the entertainment industry is in the same position.

Mr. COSELL. There is a tremendous similarity.

Senator BIDEN. Maybe we should pass a law saying no more motion picture companies can leave Los Angeles, which they are doing now, and no more of the entertainment industry can leave Broadway in New York because it is New York. It is there.

So I really have problems with this whole approach.

You have been very enlightening. I appreciate the time and look forward to the day when you run, although I cannot walk on any more.

Mr. COSELL. Thank you very much.

Senator SPECTER. Thank you.

Mr. COSELL. Thank you, and thank you, Senator Heflin.

I just want to say in the game that I referred to earlier in my testimony, when Dick Anderson made the four interceptions, a key reason was the blocking failures of Rocky Bleier.

Thank you, gentlemen.

Senator SPECTER. Our next witness is Mr. Gilbert Stein, vice president and general counsel of the National Hockey League.

Mr. Stein, we welcome you.

In view of the hour, I committed yesterday to introduce you, but since Senator Thurmond has invested me with the gavel, I shall have to do that from this side of the podium.

Mr. Gilbert Stein is vice president and general counsel of the National Hockey League. He is a native Philadelphian. He has had a unique and distinguished career in the practice of law and even more distinguished career in public service. He served as the deputy city solicitor for the city of Philadelphia from 1968, at which point he became deputy district attorney in Philadelphia when I was the district attorney, and he performed extraordinary service in that capacity as a prosecutor, as an investigator, and a very distinguished public servant.

Since Mr. Stein has been in the practice of law in Philadelphia, he has been associated with the National Hockey League, preliminary to that with the Philadelphia Flyers and he is a man with real insight into law and into professional sports. And we welcome him here today for his testimony.

We are going to be laboring under some scheduling problems, gentlemen and ladies. We have in this room at 2 o'clock the issue of school prayer, and I must return at that time. Apparently Senator Biden must, too, and we are really going to finish these hearings at very close to 1 o'clock at the outset.

So I would like to keep these time constraints in mind as we proceed.

Mr. Stein, the floor is yours.

STATEMENT OF GILBERT STEIN, VICE PRESIDENT AND GENERAL COUNSEL, NATIONAL HOCKEY LEAGUE

Mr. STEIN. Thank you. I must say that I was spellbound by Mr. Cosell's testimony as I sat in the galleries and listened to him deliver his prepared statement. Upon hearing the description in detail of Carroll Rosenbloom and his gray suede slippers and finely manicured gabardine slacks, I was imbued with a sudden deeper appreciation of the wisdom of the U.S. Senate in permitting the invocation of cloture.

As close as we are in the National Hockey League to sports fans, and I know all of you are either sports fans or have members of your family that are, we are close to it and we have a continuing and ongoing rapport with the fans, the sports fans themselves, and their desire I think could best be expressed in three words, "sports, not courts."

The reason we are so deeply supportive of the bill introduced by Senator DeConcini might best be reflected by a very recent experience that we had, and that is when the National Hockey League expands—and we started 15 years ago with four teams in the United States, and we now have 14—when we expand, the paramount concern in determining where we shall expand our league to, and if we shall expand and to whom shall we entrust the fortunes of the team, the paramount considerations are to find a local owner of stature with commitment to the community, with ties to the community, both emotional and pragmatic as well, and we look for someone that has the financial stamina to nurture a team. It is one thing to plant a seed. It is another thing to see it take root. But, quite obviously it will need nourishment and watering before it will blossom.

In 1974, we had two expansion franchises, one in Washington, D.C., where we found such a gentleman to entrust those fortunes to, and one in Kansas City where, unfortunately, I believe we could have had a more careful inspection because we entrusted it to someone who did not have the financial stamina, although he was a local owner. In 1976 he went broke and came to us with a prospective purchaser, someone who was a citizen in Denver and who would have met the criteria had we expanded into Denver in the first place. He said he wished to sell the team and we approved that sale and that transfer to Denver.

Within 2 years in Denver, that gentleman was expending efforts toward building his legal case to be able to move the franchise into the Meadowlands which now appeared on the horizon as a prospective new land of opportunity for a franchise.

The league's concern has always been to have local owners, local owners of commitment to the stability of a franchise. We were faced at that moment with the dilemma. If we tried to say to this man: "Look, you wanted a franchise in Denver," make it go in Denver, we were going to be brought into the courts because of the indicated view of his lawyers—as endorsed by the recent decision in Los Angeles—that to stop him from moving anywhere he wanted to move would be a violation of the antitrust laws.

He sold his franchise at that time to a gentleman from North New Jersey. This was in 1976, and before we approved the transfer of ownership to a team which was to remain in Denver—we asked the man very, very serious questions as to his intent and he assured us that he did not have the intent of moving this team to the Meadowlands. He was going to make it go in Denver. So we approved the new ownership, and he moved into Denver and called a press conference, his very first press conference, and announced that he is going to move the team to the Meadowlands and if the fans support the team in Denver, maybe they will be able to get a new franchise down the road.

We had concerns then that we could not control the situation. We wanted to keep the franchise in Denver. We wanted the man who had that franchise to make it go in Denver.

The next thing that happened was that, 2 years later, a gentleman in Buffalo, who is in the television business, buys the franchise from the New Jersey gentleman who owned the team in Denver, and we gave him the same kind of grilling. We wanted to make sure his intention was to keep it in Denver, and he assured us. He did not have the franchise a year and he came in and said I am losing money and we want to move. He hired Mr. Alioto, or somebody like that, and the next thing we know, we are faced with the dilemma of trying to keep a team and someone's foot to the fire who purchased it. Senator Hart came and visited with us and was part of the plea from the community to do something at the league level to keep the team there. We were powerless to do it.

When the league has an interest—which I suggest is in conformity with the public interest you have expressed, Senator Specter—that is when the league has control of selecting who the owner is going to be in a community, the league will always lean toward someone with stability and toward local ownership, someone who will stay there. Without laws like Senator DeConcini's bill, given the state of the law as the courts have determined it to be, what you have is the prospect of no control by the league as to who the owner will be in a given community. So that you have—you encourage gypsy ownership, a carpetbagger moving a team to what looks like the promised land, skimming off what kind of support he can get and usually leaving a scorched Earth behind him from the point of view of that team, that sport, and the fans that supported that team. We believe that what Senator DeConcini's bill will do can live in peaceful coexistence with what Senator Specter's bill seeks to do. We did not comment on Senator Specter's bill because it deals only with football and we thought it out of place for hockey to comment on football.

But Senator DeConcini's bill permits the owners to do Government's work for it. Permit the owners of the league, permit the league operators to say we will not let this team move out of the city. That is what Senator DeConcini's bill says. If we had that kind of protection, we might still have a team in Denver. We might have someone committed in Denver to expending the energy, effort and dollars that it takes to make it go rather than hiring the lawyers and preparing the lawsuit and making sure he is going to have losses by offending the people and creating the kind of climate that will help his case.

Senator Specter. That may make good sense when the league is counseled by someone as distinguished, judicious and fair as you.

But what is there to prevent the inappropriate move, like the Brooklyn Dodgers to Los Angeles for real estate reasons?

Mr. STEIN. The reason I think your two concepts could live in peaceful coexistence, hockey would have no objection to seeing the league in the first instance have the right to stop someone from moving and a local government authority under a given situation have the right, if the league does not stop that move, to be able to stop it. But whenever you can have private industry perform the work of Government, I think that should be the course that should be followed, and Senator DeConcini's bill merely sets up—that portion of the bill that we are interested in—sets up the ability of the league to stop the team from moving. It does not set up the ability of the league to allow a team to move.

Senator BIDEN. Why did you not want the Denver team to go to the Meadowlands? When you all sat down and decided that was something you did not want to happen—I know you are public spirited——

Mr. STEIN. From a very pragmatic point of view, we wanted our franchise to be a success. We had one in Cleveland which we did not think was run right. As a result, they left. They are not interested in hockey in Cleveland now because of the bad taste that was left in the mouth because it did not work. If you have a gypsy operation, someone that will jump into the Meadowlands and skim off the enthusiasm of a first season and not be committed to stay there, not having any financial ties to the community, and then they are gone, then they are scorching the earth in that area.

Senator BIDEN. I understand that. I thank you for that direct answer.

Is there not a real difference, though. As exciting as hockey is—between hockey and football? Football does not have to worry about a scorched earth. They could scorch the earth in Philadelphia, walk out and leave a bad taste and hate the Eagles and they will still turn the television on, no matter what.

Hockey, like soccer, they have not acquired a taste for it yet. It is a little bit like drugs; they are not hooked on it yet.

So your reason for not wanting to move is fundamentally different, not wanting a team to move is fundamentally different from a decision of a successful league. I cannot believe as a business person or as an attorney counseling the National Football League, that the owners, would say to them, now, look, what you have to worry about is bad PR if you move out of here. We are going to lose a share of the network because when we try to sell television rights to the network, they will say folks in Los Angeles do not watch any more. So, therefore, we will pay you less. Everybody knows "that ain't so."

So, with all due respect, the analogy you make as to why you did not want them to move, I believe, is totally, completely inappropriate to established sports in terms of a national sport, baseball and football.

Like I said, look at all the folks in San Francisco that are going to watch football. Just as many people will turn on their television as turned them on before. Just like when the strike came on in Philadelphia in baseball. All the talk was about people not being interested. It did not take 20 seconds. It was not even 20 seconds, click, back on. The electricity is on.

So the point is I do not, with all due respect, I do not think your circumstance sheds light on this issue.

The second point I would like to make, and I ask it in terms of a question, do you believe it is Government's work? You say is it not better to have private industry to do Government's work if it can. That sounds good, and I tend to agree with that. But do you believe it is Government's work to determine whether or not the hockey league survives, whether or not a football league survives?

Mr. **Stein**. I did not address myself to that. I addressed myself to the thrust of Senator Specter's bill which was an indicated perception that it was in the public interest to see to it that a team does not leave a community. I said if that is conceived as Government work, is it not better to have——

Senator **Biden**. I stand corrected. It is a valid distinction.

Let me ask you another though. Do you believe Senator Specter's basic premise is correct, that it is Government's work to see to it that a team does not leave a city?

Mr. **Stein**. I think there is a public interest, yes.

Senator **Biden**. Why is the public interest served by seeing to it. We are U.S. Senators. We are not State senators. Why is it the public interest, and we think about the public—we take an oath to talk about the public interest of 220-some-odd million Americans, not 4 million Americans in Philadelphia. Now, why is it in the public interest as a nation, for me as a U.S. Senator to see to it that a team stays in San Francisco as opposed to that team being in Texas? The totality of the picture, just as many people in broad numbers in the public are going to be happy as are going to be unhappy. Just as many people now are going to have increased benefits from Davis so I do not even know, moving to Los Angeles, because he has created new jobs. In terms of California revenues, they are just as well off, California.

Mr. **Stein**. When you build a stadium, Senator, I suggest there are a lot of Federal funds used.

Senator **Biden**. That leads me to my real question.

Do you believe that municipalities should put the full face and credit of the municipality on the line and partial credit of the U.S. Government on the line because they do not bargain well? Or do they not contract just like you would as a businessman? Why do you not say this city, when it bargains, and why should we step in at the Federal Government and protect them if you do not—say you want us to build a stadium? Sign a contract saying you will stay for 30 years.

But what happens is you—you in the editorial sense—you guys say build us a stadium that is going to put you, the city, on the line for 30 years, but we will only sign on for 5 years because every city is so hungry and thinks, as Mayor Schaefer must, for the instant, not for the long run, they say we better do it and we will pray after 5 years and, if, after 5 years, they do not, we will go to the Congress and get them to help us.

Really, it is a basic—and the reason I am addressing this philosophic question to you is—I think Senator Specter is one of the best legal minds in the Senate and he thinks you have a great legal mind. Now, this is my dilemma: I do not understand how we go out of our way at the Federal level to say, look, we are going to protect you, the city, because you cannot write a contract well, or we are going to protect you, the owners, because you all want to do it your way because it is perceived to be in the public interest. Or, even further, we are going to make up for the mistakes that are made if a city bargains poorly. And, lastly, how in God's name—there is a railroad boxcar company that moved into Delaware, and this is real live stuff, and I do not know how I explain to my citizens who do not have a team in their State—by the way, nor should we. We are only 600,000 people. And, by the way, I would think it equally outrageous for me—because who knows, this committee may turn around and maybe the Democrats will come back and I am chairman of the Judiciary Committee. That is a little bit of clout, as Strom Thurmond can tell you. I think it would be outrageous for me to insist that you consider something in Delaware. Just like the Meadowlands, the Meadowlands is a vacant lot. But, you know—literally, most of the people in Philadelphia can get to Delaware as rapidly as they can—they can get from West Philadelphia to a stadium in Delaware faster than they can to their own——

Senator SPECTER. I think the witness is competent to answer that question, and the answer is no, if he is not.

Senator BIDEN. What happens? There is a company that came in 3 years ago, builds a brand new modern plant to build boxcars and went out and hired a lot of people. The State put up money and the city and the county put up money for the land to encourage them. We changed the tax structure to get them in. They got in. They were doing really well. They were making money.

The union sat down to negotiate with them. They said "We do not want a union, we do not like unions. Let me tell you that straight up, fellows, at the outset we are not real crazy about them. We really think you should have a company union." Our management—if I were management, I would probably say that, too.

"The folks say if you do not negotiate with us, we will strike." They said, "OK, good. By the way, I forgot to tell you, Delaware, we got an offer we cannot refuse. Texas will give us the land. There ain't no union down there because they are good old boys. They will allow us to move in. The wages will be less. They will pay for our move, and we can afford to leave the $12 million investment we just put up. We can leave it and we will still make more money."

Now, the unions come to me, the State comes to me and says let us help because that is a big deal in my little State, a big deal.

I think as chairman of the Judiciary Committee next year when the Democrats take over, I should introduce legislation to make sure, if it is detrimental to the community, that they cannot move. They are making money. They cannot move, and it is clearly designed to bust the union.

This has nothing to do with unions and football. Let us say it is clearly designed because they cannot get the office space they want with the chief executive officer looking over a lake instead of a highway, whatever the reason. Now, as a businessman, could you countenance that kind of legislation? Would you be willing to come back here as a businessman and support me later this session when

I introduce a bill to see to it that that boxcar company cannot move?

Mr. STEIN. I am not a businessman.

Senator BIDEN. As a lawyer, would you be willing to say that is good public policy?

Mr. STEIN. I would have to examine it. I would have to think about it. I am a little more facile with sports and I suggest an answer to your earlier question that maybe you would find the public interest that Senator Specter is talking about might run parallel to the public interest that has been recognized by the Congress in the past in keeping cities like New York from going into default.

Senator BIDEN. I am not suggesting Senator Specter's approach is not worthy of serious consideration. And I may end up voting for it. But understand what we are all doing here, just understand. I do not think in our efforts to go out and protect our interests, and I am not being facetious when I say Philadelphia teams are as important in my State as they are to the Senator from Pennsylvania—that sounds crazy to people who do not know the region but, really and truly, they are.

As a matter of fact, talk about a psychological effect, when Rudy Carpenter, literally my next door neighbor, sold the Phillies, there was depression in Delaware. I am not kidding you. It hit Delaware like you cannot imagine because we believed it was our team. It was called the Philadelphia Phillies but everybody knew that all Delawareans got in the front of the line before Philadelphia. Really and truly. I would get it before——

Senator SPECTER. Do you want to answer that question?

Senator BIDEN. Do you understand what I am trying to say? I do not think we have figured out what we are doing here. Senator Specter wants to make sure the Eagles do not leave, not that they are thinking of leaving.

Senator SPECTER. And the Steelers.

Senator BIDEN. And I do not want to see that boxcar company move when they are making money. They held the State up. They acted in bad faith and they left, and yet I have withheld introducing legislation because it is not compatible with my view of the role of Government.

So I do not know how we do it for sports.

I appreciate you allowing me to worry about my problem out loud with you here.

Mr. STEIN. Let me throw one last coal on Senator DeConcini's bill. It is true that football is different than my sport, hockey, but we do have a concern. And I have articulated to you our concern and why we believe that it is—we believe it was an abortion of the antitrust laws to judicially determine that the antitrust laws permitted the kind of thing that Al Davis did. The reason we support Senator DeConcini is not to carve out any additional exemptions in the antitrust laws but to clarify what we believe was congressional intent in the passing of the antitrust laws, and that is that they should not apply to this kind of situation.

Senator BIDEN. Thank you very much.

Senator SPECTER. Thank you very much. Your testimony was very illuminating and your full statement will be made a part of the record.

I look forward to receiving additional counsel.

Mr. STEIN. Senator, I was just reminded by counsel and I would like to request permission that the prepared statement, the full statement of John Ziegler, president of the National Hockey League, be submitted as included in your record of these proceedings.

Senator SPECTER. We have it and that is what I just said. Your full statement will appear in the record.

[Mr. Ziegler's prepared statement as submitted by Mr. Stein follows:]

PREPARED STATEMENT OF JOHN ZIEGLER, PRESIDENT OF THE NATIONAL HOCKEY LEAGUE SUBMITTED BY GILBERT STEIN

Mr. Chairman and members of the Committee, I am Gilbert Stein, Vice President and General Counsel of the National Hockey League. I am here in place of President John A. Ziegler, Jr. who regrets his schedule did not permit him to appear today. I appreciate the opportunity to present his statement to you on S. 2784, the "Major League Sports Community Protection Act." The National Hockey League is pleased to present its views on this legislation, which would clarify in several areas the application of the antitrust laws to professional team sports. We believe that this legislation serves the interests of both the public and professional sports and urge Congress to enact it.

The National Hockey League was founded over sixty-five years ago. It has grown from six clubs to twenty-one, fourteen of which are in the United States.

Mr. Chairman, we believe that we bring a different perspective to this legislation than some of the other professional sports leagues. We have just successfully completed the difficult and painful process of a franchise relocation. The Colorado Rockies were sold and moved to the Brendan Byrne Arena in East Rutherford, New Jersey and are now called the Jersey Devils. I can assure you that that relocation was very difficult, effected as it was, under the shadow of the Oakland Raiders lawsuit in Los Angeles. Fortunately, the move was successfully concluded without resorting to our legal system, always a costly process both financially and in terms of fan relations.

Mr. Chairman, we believe our Nation's sports fans are fast growing weary of sports litigation. It seems that the sports pages of our newspapers are filled almost with as much news of lawsuits as of sports and players. We believe our fans want sports, not courts. That is why we support Senator DeConcini's legislation which would clarify the application of the Federal antitrust laws to our activities and thereby lessen the areas of potential litigation.

The NHL Position on Relocations

The National Hockey League's rule on the movement of clubs is simple. "Thou Shalt Not." Our Constitution provides simply that "No member shall transfer its club and franchise to a different city." If a club wishes to move, the Constitution must be amended and this requires a unanimous vote. Every club must be convinced that a move is absolutely necessary. The League feels that strongly about movements and their effect on our relations with the communities and fans that support NHL clubs.

One of the objectives of the league has been stability. We have always made every effort to preserve an existing franchise which may have experienced financial difficulties. The league has expended millions of dollars in assisting ailing franchises, with the hope that they would survive and that the fans in that area would not be disappointed and left without a club.

In most cases we have been successful. In four instances, however, circumstances have required that NHL clubs be permitted to move from one city to another. All have occured since 1976. In each case the moves involved new franchies that were having financial problems, not established clubs.

The Oakland Seals moved to Cleveland in 1976. That club was subsequently merged with the Minnesota North Stars. The Kansas City Barons moved to Denver in the same year and became The Colorado Rockies. As I indicated, that club moved this year to New Jersey. And, the Atlanta Flames moved to Calgary, Alberta in 1980.

I can assure you that in each instance a great deal of time and money was spent in order to avoid shifts to other cities. Every attempt was made to keep a club in its original location. In each instance, moves were permitted only because the club was losing substantial amounts of money, in some cases so much that there was a fear that personnel salary requirements might not be met. I can also assure you that no club would be permitted to move -- and it would take a unanimous vote to authorize relocation -- were it being supported by fans in its city and financially viable.

The San Francisco Seals Decision

I mentioned that the NHL was interested in the Oakland Raiders decision. This was not simply because we were involved in a move at the same time. It was also because the NHL had faced a similar situation almost ten years ago. Our rule on franchise movements was upheld then and was the standard in sports, relied upon by other leagues.

In fact, the NHL found itself in a situation similar to the NFL's in the same city, Oakland. In 1973, the owners of the San Francisco Seals asked the league if they could disband the Seals and start a new franchise in Vancouver, British Columbia, in effect to transfer the franchise to Canada. When the League Board of Governors denied the request, the Seals' owners sold the franchise to a new owner and then brought suit against the league and member clubs for violation of the Sherman Act.

Pursuant to a Motion for Summary Judgment, the District Court Judge found the territorial restraints imposed by the league did not restrain commerce and were not a violation of the antitrust laws. San Francisco Seals, Ltd. v. National Hockey League, 379 F. Supp. 966 (Cent. D. Cal. 1974) The Judge noted that the organizational scheme of our professional hockey league -- which required unanimous approval for a move -- which all members agreed to upon joining and by which all members were bound, did not impose a restraint upon trade or commerce in violation of the Sherman Act.

Before the Oakland Raiders decision, the antitrust law as to league decisions regarding the location of franchises seemed clear. The Judge in the San Francisco Seals decision confirmed the right of the NHL to determine that club should remain in the California Bay Area. The NHL, and no doubt other professional sports leagues, had been relying on this decision until the Oakland Raiders case.

Even before this, the Department of Justice had testified to the House Select Committee on Sports in 1976 that team transfer issues probably did not even present an antitrust issue. Specifically, Mr. Joseph Sims, the Deputy Assistant Attorney General for Antitrust, stated:

> "Whether or not antitrust laws, even if fully applicable and without any question as to their applicabilty, would have any particular effect on things like the movement of franchises or expansion of leagues is highly questionable. I mean it is not clear to me, for example, that the antitrust laws, even if fully applicable . . . would have any effect on the decisions of leagues to move teams from one city to another.
>
> "It is not clear to me that that is an antitrust issue. . . .
>
> "The question of transfers of sports franchises and league expansion and similar issues . . . have created a considerable amount of public controversy, but . . . in my view, are not terribly amenable to antitrust resolution . . . ."
>
> Inquiry into Professional Sports, Hearings Before the Select Committee on Professional Sports, 94th Cong., 2d. Sess., Part 2, at 296 and 301 (1976) (Statement of Deputy Assistant General Joe Sims) (emphasis added).

The NHL, and other leagues, have been relying on the San Francisco Seals decision. The Oakland Raiders decision goes directly against the logic of the Judge in the Seals decision and wipes out that Judge's sensible decision to let leagues run their own business. It thus causes us as much concern as other sports. The previous clarity in this area has been dissolved, leaving confusion and concern not only in sports but also in communities with professional teams.

The issue of franchise relocation, while dormant now, may someday have to be faced by the NHL again. The league would like to face this task, if necessary, responsibly and with some certainty that we will not be subject to antitrust suits and treble damage awards no matter how we may resolve any future situation. We would like to be able to handle it as a league rather than permitting one person to circumvent the rules he agreed to in joining our enterprise.

We would also like to be able to ensure any community that may receive a franchise that it will stay there. We thus support this legislation which will encourage stable ties between communities and teams that are consistently supported by the local fans.

This Legislation versus "Free Enterprise."

Mr. Chairman, I understand there is some concern on the Committee that this legislation is contrary to "Free Enterprise" and that it adds another layer of governmental regulation to business. I strongly disagree. This legislation will result in the exact opposite. It will ensure that free decisions and agreements, freely entered into by businessmen, will survive the potential interference of the Federal judicial system.

In our view, the team location provision of S. 2784 properly permits sports leagues to operate in the marketplace in competition with other leagues. The provision recognizes that leagues, such as the NHL, are joint business enterprises entitled to determine where the NHL's product will be sold. This legislation simply makes it clear that Federal courts should not override voluntary agreements among the members of sports leagues as to where the league will operate. This is, in the NHL's view, sound public policy.

The team location provision of S. 2784 also confirms existing antitrust law as it was applied to the NHL in the San Francisco Seals case where the team sued the league, attempting to have a Federal court interfere with the league's right to determine where its teams should operate.

As I mentioned, unlike the NFL's case in Los Angeles, the Federal court acted with judicial restraint and did not interfere with the NHL's decision. Instead, the court concluded that the San Francisco team and all of the other members of the NHL were "acting together as one single business enterprise," not competing with each other but "competing against other similarly organized professional leagues." This is, in the NHL's view, a sensible application of the antitrust law to sports. It recognizes that a private business judgment and agreement, freely entered into as to where a league's teams should properly operate, should be honored.

In summary, the NHL shares the view expressed in Senator Heflin's statement at your hearings on August 16. Senator Heflin emphasized that free enterprise standards do not mean that individual teams should be permitted to move wherever they want. Instead, as Senator Heflin put it:

> "Antitrust policies which permit individual team owners to ignore the league's relationship and act as if they were sole proprietors do not reflect free enterprise principles, and they do not serve the public interest . . . Free enterprise does not require the destruction of business partnerships or joint ventures. It does exactly the opposite. It demands that voluntary partnerships and joint ventures be permitted to function on the terms agreed on by the participants."

The NHL agrees that leagues should be entitled to act in accord with their league agreements without interference in this area from courts or juries who are just second-guessing the leagues' decisions.

Revenue Sharing

The National Hockey League believes that in today's economic climate it is essential for a league's survival that its members have the freedom to agree to share common revenue sources.

In the NHL gate receipts are not shared by the member clubs, however, revenue from television broadcasting is. In addition, our member clubs and the NHL Players' Association are joint venturers in all international competition, and, as such, shared equally in the proceeds of such events. Without these revenue sources, and the freedom to share additional like revenue sources, the viability of a number of our member clubs would be in jeopardy. We accordingly support the concept of continuing to permit revenue sharing.

The NHL supports the right of each league to make its own determination freely regarding revenue sharing without the ghost of antitrust litigation and damages in the background.

Conclusion

In conclusion, the NHL supports Senator DeConcini's bill as a narrow, but necessary, exemption under the antitrust laws. Local communities will be served and protected by it, as many mayors have testified. Sports will be served by it. Most importantly, the fans will be served by the elimination of unecessary and unproductive litigation.

Thank you very much for the opportunity to present our views. If you have any questions, I will be happy to respond.

Senator SPECTER. We will next hear from Hon. David Cunningham, councilman from the city of Los Angeles.

Welcome. We are sorry the hour is so late and your time so short.

Senator BIDEN. Mr. Cunningham, I apologize. I have to leave to make a speech at 12:30.

Mr. CUNNINGHAM. I regret that, too, because I think you are on the right road and the right track.

STATEMENT OF HON. DAVID CUNNINGHAM, COUNCILMAN, CITY OF LOS ANGELES, CALIF.

Mr. CUNNINGHAM. I would just like to share one point with you. Of course, I have a prepared testimony and, Mr. Chairman and members of the committee, it will go into the record, as I understand?

Senator SPECTER. Your testimony will be made a part of the record in full, and we would appreciate it if you would abbreviate for purposes of the hearing.

Mr. CUNNINGHAM. I appreciate that.

What I want to quickly say is that perhaps the point of inquiry you make about understanding the fair and objective standards is probably a very important aspect for consideration. However, I am concerned about the retroactivity of these bills. I think the city of Los Angeles would admit very clearly that we have been playing the game according to the existing rules, no doubt about it. I am sure that Mayor Schaefer of Baltimore would tell you that they play the game according to the rules.

I think the concern is that we are willing to play the game according to the rules but we do not think that after the touchdown has been scored a law should be passed to take our touchdown away from us that we have scored according to the rules, fully in compliance with the existing rules, and we would appreciate that that be a serious consideration.

I would be glad to answer any questions that you might have.

I might add that S. 2784 does not really in the true sense protect cities, and I think you are aware of that as you undertake a look at that because it does not set up what those fair and objective standards might be in the full purview of the public interest and the public review by the public at any time.

Senator SPECTER. Councilman Cunningham, staff just handed me an extract apparently from your testimony where you have stated that just before the Raiders' trial, the NFL voted 17 to 10 to approve the judge's settlement proposal which would permit Mr. Davis to own an expansion team in Los Angeles while leaving the Raiders in Oakland and the Coliseum and Mr. Davis and all had agreed to such a proposal.

What is this actual basis for that bit of information?

Mr. CUNNINGHAM. That information came to our attorneys from a source in the NFL.

Senator SPECTER. Can you be more specific than that?

Mr. CUNNINGHAM. Not at the present time.

Senator SPECTER. Well, that is an interesting allegation which I will determine with that indirect hearsay.

If you could furnish us with any evidence on it, we would be interested to know that.

Let me ask you one question because the hour is so late, Councilman Cunningham. And that is would you think it appropriate in terms of application of pending cases, specifically the Raiders in Los Angeles, to leave the issue to the discretion of a judge on equitable considerations, as we have on S. 995, the contribution and antitrust cases?

Mr. CUNNINGHAM. I think we could find that acceptable. We think that the judicial review of the pending cases and the decisions that will be made by the justices or the judges in those cases—we would leave that to their interpretation and their determination.

Senator SPECTER. You would be willing to do that so far as the issue of the Raiders being in Los Angeles is concerned?

Mr. CUNNINGHAM. Let me correct one item that I think has been misstated regarding our Supreme Court with reference to the theory of eminent domain.

When that issue went to our Supreme Court, along with the attempt to try to get the temporary restraining order as well as the injunction against the Raiders' move, our Supreme Court simply reviewed it and said that it was perhaps an issue worth being heard and that it should go back to the lower courts for them to seek a full hearing and a full examination of the question. To really make the issue stronger, they refused to issue a temporary restraining order and they refused to allow the injunction to go forward.

I might indicate to you that when our Coliseum sought legislation before the State legislature of a similar bill that clarified that issue, it failed. I think the wisdom of the Legislature indicated that it would be better to allow these matters to be adjudicated by the courts.

Senator SPECTER. Thank you very much, Councilman Cunningham. We very much appreciate your being here and, as I say, your full statement will be made a part of the record.

[The prepared statement of David Cunningham follows:]

PREPARED STATEMENT OF DAVID CUNNINGHAM

MR. CHAIRMAN, MEMBERS OF THE SENATE JUDICIARY COMMITTEE,

GOOD MORNING. I AM DAVID CUNNINGHAM, COUNCILMAN OF THE CITY OF LOS ANGELES SINCE 1973. I AM CHAIRMAN OF THE GRANTS, HOUSING AND COMMUNITY DEVELOPMENT COMMITTEE, AND I AM ON THE BOARD OF DIRECTORS OF THE NATIONAL LEAGUE OF CITIES. I HAVE COME BEFORE YOU TODAY REPRESENTING THE THREE MILLION PEOPLE OF LOS ANGELES AND TO DELINEATE THE CITY OF LOS ANGELES' OPPOSITION TO S.2764 AND S.2821.

THE RETROACTIVE FEATURE OF THE NFL PROPOSALS.

AS AN ELECTED OFFICIAL I AM ALL TOO FAMILIAR WITH THE PRESSURE THAT A SPECIAL INTEREST GROUP CAN BRING TO BEAR ON BEHALF OF SELFISH LEGISLATION WHICH IS ALWAYS GRANDLY STYLED AS BEING IN THE PUBLIC INTEREST. I AM AWARE OF NO BETTER RECENT ILLUSTRATION THAN THE BILLS BEING CONSIDERED HERE TODAY. THE "MAJOR LEAGUE SPORTS COMMUNITY PROTECTION ACT" IS A SHAM WHICH IN REALITY WOULD OFFER NO PROTECTION TO COMMUNITIES BUT WOULD IN FACT REMOVE THE LAST RECOURSE MUNICIPALITIES WOULD HAVE AGAINST THE ALREADY TOO-FORMIDABLE POWER OF COMMISSIONER ROZELLE.

BEFORE I TURN TO THE REAL MOTIVES BEHIND THE NFL'S AWESOME LOBBYING CAMPAIGN, I MUST STRESS THAT THE MOST OFFENSIVE PORTIONS OF THE BILLS WHICH HAVE BEEN INTRODUCED ARE THE PROVISIONS FOR RETROACTIVE EFFECT. AS MEMBERS OF THE COMMITTEE ON THE JUDICIARY, YOU ARE NATURALLY AWARE THAT A DELICATE BALANCE EXISTS BETWEEN THE LEGISLATIVE AND JUDICIAL BRANCHES. IT WOULD BE AN UNWARRANTED INTRUSION ON THE PROVINCE OF THE COURTS FOR CONGRESS TO CHANGE THE RULES AFTER THE GAME HAS BEEN PLAYED. IN RECENT YEARS, VARIOUS LOSERS IN JUDICIAL ANTITRUST BATTLES HAVE LINED UP OUTSIDE YOUR DOORS TO PLEAD FOR AFTER-THE-FACT RELIEF. I AM THINKING OF SOFT DRINK BOTTLERS, CORRUGATED CONTAINER MANUFACTURERS AND NEWSPAPER PUBLISHERS, AMONG MANY OTHERS. IT IS BAD PUBLIC POLICY TO GRANT SUCH EXEMPTIONS, AND IT ONLY GUARANTEES THAT THE GROWING TRICKLE OF LOSERS SEEKING CONGRESSIONAL BAIL-OUTS WILL TURN INTO A VERITABLE FLOOD.

I CANNOT HELP WONDERING WHAT THE PUBLIC THINKS WHEN THE NFL LOSES A LONG, HIGHLY PUBLICIZED COURT BATTLE, AND FAR FROM ACCEPTING ITS LOSS IN GOOD GRACE, IMMEDIATELY UNLEASHES A HIGH PRESSURE, BIG BUCKS LOBBYING EFFORT TO NULLIFY ITS LOSS. FOR CONGRESS TO RESPOND FAVORABLY TO THIS CAMPAIGN WOULD SURELY REINFORCE THE PREVAILING VIEW THAT THERE IS ONE TYPE OF JUSTICE FOR THE AVERAGE CITIZEN AND ANOTHER FOR FAT-CAT SPECIAL INTERESTS.

IF A RETROACTIVITY PROVISION WERE INCLUDED IN ANY LEGISLATION, IT WOULD SIMPLY GUARANTEE ANOTHER PROTRACTED COURT BATTLE. THERE ARE SERIOUS QUESTIONS AS TO THE CONSTITUTIONALITY OF A BILL WHICH APPLIES TO A CASE WHICH HAS ALREADY BEEN TRIED AND IS PENDING ON APPEAL. I CAN ASSURE YOU THAT THE LOS ANGELES COLISEUM AND THE RAIDERS WOULD VIGOROUSLY CONTEST THE LEGALITY OF ANY RETROACTIVE LEGISLATION, WITH THE RESULT THAT THE FINAL HOME OF THE RAIDERS WOULD REMAIN UNCERTAIN FOR YEARS TO COME.

S.2784 WOULD NOT PROTECT MUNICIPALITIES.

THE TITLE OF S.2784, "MAJOR LEAGUE SPORTS COMMUNITY PROTECTION ACT OF 1982), IS DECIVING AND A PERVERSION OF THE TRUTH. THIS BILL AFFORDS NO PROTECTION TO COMMUNITIES FROM CAPRICIOUS AND GREED-DRIVEN DECISIONS OF PRO SPORTS LEAGUES OR THEIR COMMISSIONERS. WHAT THE BILL REALLY ACCOMPLISHES IS TO INSULATE THE NFL'S DECISIONS FROM LEGAL CHALLENGES UNDER THE ANTITRUST LAWS, THUS REMOVING THE LAST RECOURSE COMMUNITIES AND MUNICIPALITIES HAVE AGAINST PROFESSIONAL SPORTS TEAMS OWNERS.

S.2784 WOULD NOT GUARANTEE THAT TEAMS PRESENTLY LOCATED IN SPECIFIC COMMUNITIES WOULD CONTINUE TO BE LOCATED IN THOSE COMMUNITIES IN THE FUTURE. THE BILL DOES NOT PROHIBIT THE MOVEMENT OF A SPORTS FRANCHISE FROM A COMMUNITY. ON THE CONTRARY, THE BILL SIMPLY PROVIDES THAT THE NFL'S DECISION ON WHETHER TO LET A TEAM MOVE CANNOT BE REVIEWED IN COURT. IF THIS BILL HAD BEEN IN EFFECT AT THE TIME IT WOULD NOT HAVE PREVENTED THE NFL FROM LETTING THE RAMS ABANDON LOS ANGELES. NOR WOULD IT HAVE

PREVENTED THE CHICAGO CARDINALS FROM BEING MOVED TO ST. LOUIS, A MOVE INITIATED AND PAID FOR BY CBS TO SUIT ITS PURPOSES, AND APPROVED BY THE NFL WITHOUT RGARD FOR THE DESIRES OF THE CHICAGO COMMUNITY.

THE PROPOSED LEGISLATION WOULD GIVE THE NFL COMPLETE AND UNREVIEWABLE POWER TO DECIDE WHETHER A TEAM CAN MOVE. TO THINK THAT THIS POWER WOULD BE DISPASSIONATELY EXERCISED FOR THE BENEFIT OF COMMUNITIES IS NAIVE. ONE ONLY HAS TO REVIEW HOW THE NFL HAS ACTED WITH RESPECT TO LOS ANGELES TO SEE HOW MISGUIDED SUCH THINKING IS.

FOR OVER THREE DECADES THE PEOPLE OF LOS ANGELES STRONGLY SUPPORTED NFL FOOTBALL BY ATTENDING RAMS GAMES IN THE LOS ANGELES COLISEUM. MOREOVER, THE COLISEUM SERVED AS THE HOME OF THE NFL'S PRO BOWL GAME FOR 21 CONSECUTIVE YEARS AND HOSTED TWO SUPER BOWL GAMES, INCLUDING THE INAUGURAL CONTEST IN 1967. HARDLY A STADIUM "NOT FIT" FOR PRO FOOTBALL, AS COMMISSIONER ROZELLE HAS CLAIMED ON A FEW OCCASIONS.

IN POINT OF FACT, THE COLISEUM PROVIDED MILLIONS OF DOLLARS WORTH OF IMPROVEMENTS DURING THE RAMS' TENANCY. HOWEVER, WHEN CARROLL ROSENBLOOM ACQUIRED THE RAMS IN 1972 BY MEANS OF A TAX-FREE EXCHANGE OF HIS OWNERSHIP IN THE COLTS, IT QUICKLY BECAME APPARENT THAT NOTHING WOULD SATISFY THE NEW OWNER OF THE TEAM. IN MATERIAL DISCOVERED DURING THE RECENT COLISEUM-NFL LITIGATION WE FOUND THAT MR. ROSENBLOOM WAS ENTERTAINING THOUGHTS OF MOVING THE RAMS OUT OF LOS ANGELES AS EARLY AS SIX MONTHS AFTER HE ACQUIRED TITLE TO THE TEAM. SOME OF THESE PLANS INCLUDED LAND DEALS VERY SIMILAR TO THE ONE HE ULTIMATELY PULLED OFF FOR 95 ACRES OF PUBLIC PROPERTY IN ANAHEIM WHEN HE MOVED THE RAMS.

THROUGHOUT THIS ENTIRE PERIOD, THE COLISEUM COMMISSION AND THE CITY OF LOS ANGELES NEVER RECEIVED ANY ASSISTANCE FROM MR. ROZELLE OR THE NFL IN ITS DEALINGS WITH THE OWNERSHIP OF THE RAMS. IT IS IRONIC THAT MR. ROZELLE TELLS THIS COMMITTEE OF HIS great mediator role in helping the Colts in Baltimore, the Dolphins in Miami and the Vikings in Minnesota come to agreements with their communities. We in Los Angeles would like to know where Mr. Rozelle was when Rosenbloom put the Rams on the auction block in complete disregard for the welfare of the South-Central Los Angeles community. Mr. Rozelle stood idly by while Rosenbloom deserted a community that had supported his franchise over decades for a deal that conservatively was worth over 25 million dollars personally to Mr. Rosenbloom. Is it coincidental that Rosenbloom was instrumental in electing Rozelle to the Commissioner's job?

The NFL argument that the Rams move from Los Angeles to Anaheim, California is analogous to other moves of teams to outlying suburbs such as Pontiac, Michigan; Orchard Park, New York; and Irving, Texas is a farce. In 1973, in a study conducted by the Stanford Research Institute *on behalf of the National Football League* surveying areas for possible expansion, SRI identified Anaheim as the number one area in the country for an expansion team, even with the Rams located in Los Angeles. Attached to the written text of my testimony is a copy of the of the conclusion of that study. It is worth noting that while Anaheim is listed as the top area for a new team, nowhere does one find a listing for the communities of Pontiac, Orchard, Irving, East Rutherford, New Jersey, where the Giants now play or Foxboro, Massachusetts, the relatively new home of the Patriots. Quite simply, the move of the Rams to Anaheim was to an area that the NFL knew was separate and distinct from Los Angeles -- an area with a completely separate financial, residential and business base.

The move of the Rams out of Los Angeles left a void in the city, a void that other team owners, with the cooperation of Mr. Rozelle, were not above exploiting to extract lucrative deals in their existing home locations. When Joe Robbie of the Miami Dolphins was pushing for a better deal in Miami, he publicly toured the L.A. Coliseum, praising it as a good home for his team. Robert Irsay of the Baltimore Colts also publicly threatened a move to L.A. when he was having problems whipping Baltimore officials into line. Irsay even went so far as to say it was 98% certain that the Colts would move to the Los Angeles Coliseum.

In any of these situations did Mr. Rozelle or other NFL owners express outrage or concern over these possible moves to Los Angeles? The answer is simply NO! -- for that would have neutralized the extortion-like pressure these owners were applying to their home cities.

In the Vikings situation Rozelle even became a willing participant in extracting a domed stadium, built at taxpayer expense, for the benefit of Mr. Winter and his Vikings. The Vikings, even with the pressure of a threatened move to Los Angeles, were not doing very well in getting the Minnesota legislature to come up with the 55 million dollars for a new stadium. It seemed that some of the Minnesota legislators actually believed previous NFL rhetoric that teams would not be moved out of existing locations, if they are supported. So why should they use taxpayer money in these times of fiscal crises to build a fancy new stadium? However, Rozelle quickly set straight those legislators who were naive enough to think that his talk about concern for fan loyalty was sincere.

After a league meeting in Hawaii, during which the Vikings' problem with their recalcitrant legislature was discussed, Mr. Rozelle held a news conference at which he told the Minnesota legislators that they should not believe he would stop a Vikings' move, even if the fans loyally filled the existing stadium. In other words, "build that domed stadium or we'll take the Vikings away from you". The legislators in Minnesota got the message and the Vikings got their new stadium.

What explains the NFL's inconsistency on the subject of franchise relocation? Why can the Rams desert Los Angeles and the Vikings, Colts and the rest threaten to follow suit, while the Raiders are condemned to stay in Oakland forever? The answer is really not so difficult. A member of Rozelle's inner circle in the NFL can count on his support to extract millions from a legislature or to use his franchise as the bait to snare a lucrative personal fortune. But Al Davis has the misfortune to be a loner, who choses not to cozy up to Pete Rozelle and his retinue of faithful admirers.

The true purpose of S.2784 is to carry on a personal vendetta of Pete Rozelle. This Committee should know that on the eve of trial of the Raiders' antitrust action, the NFL held a meeting in Phoenix. The owners voted 17-10 to approve the judge's settlement proposal, which would permit Al Davis to own an expansion team in Los Angeles, while leaving the Raiders team in Oakland. The Los Angeles Coliseum and Davis had already agreed to such a proposal. Pete Rozelle literally threw a tantrum, threatening to resign if the owners did not reverse their vote. Since Rozelle was putting the finishing touches on a 2 billion dollar television contract, the owners hastily acquiesced and staged a phony 27-0 vote against settlement.

Anyone who is close to the NFL knows that Mr. Rozelle is obsessed with waging a personal war against Al Davis, a man who has been a thorn in Rozelle's side since he was Commissioner of the rival American Football League in the mid-1960's. Does anyone doubt that Rozelle would have permittd the Raiders to move if someone else owned the franchise? Why would Rozelle reject a settlement that left the Raiders in Oakland, if not because of hatred for Davis?

IN FACT, IF THE EXPRESSIONS OF CONCERN FOR FAN LOYALTY AND COMMUNITY CONCERN WERE SINCERE, COMMISSIONER ROZELLE WOULD BE BUSY ARRANGING FOR AN EXPANSION TEAM FOR OAKLAND. HE CANNOT DO THAT, OF COURSE, BECAUSE HE NEEDS TWO EXPANSION CARROTS TO DANGLE BEFORE YOU IN HIS CRUSADE TO FORCE AL DAVIS BACK TO OAKLAND.

IF YOU WISH TO TEST WHETHER MR. ROZELLE IS CONCERNED PRIMARILY WITH THE FUTURE WELFARE OF COMMUNITIES ACROSS THE COUNTRY, OR MAINLY WITH PREVAILING IN HIS PERSONAL FEUD, SIMPLY ASK HIM, OR ONE OF HIS CREW OF LOBBYISTS, IF HE WILL SUPPORT PASSAGE OF LEGISLATION WHICH IS NOT RETROACTIVE.

IF YOU ASK WHY THE NFL OWNERS SUPPORT ROZELLE'S CRUSADE, ONE ANSWER IS SIMPLY THAT HE WIELDS ENORMOUS POWER WITHIN THE NFL, DOLING OUT FAVORS TO FRIENDS AND PUNISHING THOSE WHO DARE TO DISAGREE. THERE IS ALSO THE MATTER OF SIMPLE SELF-INTEREST. AT THE RECENT ANTITRUST TRIAL, MR. ROZELLE FINALLY ADMITTED THAT ONE REASON FOR KEEPING THE RAIDERS OUT OF LOS ANGELES WAS SO THAT THE NFL OWNERS COULD EVENTUALLY SELL THE HIGHLY LUCRATIVE EXPANSION RIGHTS TO LOS ANGELES AND SPLIT UP THE MONEY AMONGST THEMSELVES. COMMISSIONER ROZELLE AND HIS NFL OWNERS ARE AMONG THE BEST AT GIVING LIP SERVICE TO THE CONCEPT OF COMMUNITY INTEREST, BUT WHEN ONE LOOKS AT THE RECORD ONE FINDS A TOTAL DISREGARD FOR COMMUNITY INTERESTS AND ONLY CONCERN WITH IMMEDIATE SELF-INTEREST.

I CANNOT EMPHASIZE STRONGLY ENOUGH THAT THE PROPOSALS BEFORE YOU WOULD NOT GUARANTEE FRANCHISE STABILITY. THE EASIEST WAY TO DEMONSTRATE THIS IS TO LOOK AT MAJOR LEAGUE BASEBALL. WE ALL KNOW THAT BASEBALL IS EXEMPT FROM THE ANTITRUST LAWS AND NO ONE CAN FILE AN ANTITRUST SUIT TO CHALLENGE A DECISION ON RELOCATION. YET WE ALSO KNOW THAT BASEBALL TEAMS HAVE MOVED ON A NOT INFREQUENT BASIS. PASSAGE OF S.2784 OR ANY OTHER FORM OF ANTITRUST EXEMPTION WOULD NOT KEEP NFL TEAMS IN THEIR PRESENT LOCATIONS. IT WOULD SIMPLY DEPRIVE A COMMUNITY WHICH DID LOSE A TEAM, SUCH AS LOS ANGELES, FROM SEEKING REDRESS IN THE COURTS.

One final point must be made to set the record straight. When Mr. Rozelle appeared before you, he testified that he made "private and public commitments to Congress that no franchise, in particular the Oakland Raiders, would be moved so long as it remained well-supported in its home community". (P. 8 of Rozelle testimony). Mr. Rozelle has made this claim off and on during the last several years, when it suited his purposes to suggest that Congress somehow had already endorsed his fixation with preventing a Raiders' move.

The truth is that Congress never asked for and Rozelle never made any such commitment. In 1980 several Oakland Raiders season ticket holders filed a lawsuit in San Francisco, arguing that Rozelle's supposed commitment to Congress barred the Raiders from moving. The NFL joined the Raiders and Los Angeles in opposing that lawsuit. Rozelle's lawyers filed a brief telling the Court in no uncertain terms that no such commitment was made to Congress. (See attached portion of NFL Brief).

In conclusion I urge you to look through the lofty motives Mr. Rozelle ascribes to himself to see this legislation for what it is -- an attempt to enact one man's personal grudge into the law of the land.

Mr. Chairman, members of the Committee, thank you on behalf of the citizens of Los Angeles for allowing me to express our opposition to the measures before you today.

Table 20

SUMMARY RANKING OF CANDIDATE AREAS

	Tables 1-6	Table 7	Tables 8-10	Tables 11-13	Table 14	Tables 15-17	Table 18	Table 19	Tables 1-19 Overall Ranking
naheim	4	3	5	4	22	4	8	7	1
ew York	1	1	3	24	20	1	13	5	2
eattle	3	9	4	15	24	3	6	4	2
hicago	2	2	2	23	13	2	18	8	4
hoenix	7	20	9	3	10	8	22	9	5
ortland	6	12	7	12	20	6	11	14	6
olumbus	9	4	8	14	7	9	20	1	7
ndianapolis	5	5	6	22	15	7	12	22	8
ampa	7	15	23	5	3	5	23	12	9
onolulu	13	23	1	6	23	18	10	11	10
klahoma City	15	18	12	7	17	15	4	6	11
ouisville	10	9	11	20	13	10	21	18	12
reensboro	17	7	12	18	3	13	15	17	13
an Antonio	11	19	22	10	15	11	7	18	14
emphis	12	16	19	17	9	11	14	10	15
arlotte	21	6	10	9	1	19	9	20	16
rmingham	13	8	21	20	18	16	1	3	17
cksonville	19	21	18	10	2	17	17	2	18
orfolk	16	14	19	12	8	20	3	16	19
lando	20	11	17	1	6	21	24	23	20
shville	18	17	15	19	10	13	16	15	21
cson	22	24	15	2	10	22	19	13	22
ewport News	23	13	12	7	5	24	5	24	23
arleston	24	22	24	16	19	23	2	21	24

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League and its member clubs
(except Oakland Raiders, Ltd.)

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

WILLIAM S. DOWNING, on behalf of himself and all persons similarly situated,

Plaintiffs,

v.

OAKLAND RAIDERS, LTD., a partnership; et al.,

Defendants.

No. C-80-0681-RHS

MEMORANDUM OF THE NATIONAL FOOTBALL LEAGUE IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

> "The bill would make [the merger] possible by declaring that the simple act of the clubs of both present leagues in bringing their operations within the structure of a single league will not in itself be subject to challenge under the antitrust laws.
>
> It does no more than this.
>
> In the words of the Senate report, it 'would not extend to the combined league any greater antitrust immunity than that now existing for the existing professional football leagues."

Testimony of Pete Rozelle on S.3817 before the Antitrust Subcommittee of the House Committee on the Judiciary, October 11, 1966 ("House Hearings"), p. 32 (See Exhibit K to March 14, 1980 Affidavit of Michael N. Khourie.)

The "legislative contract" theory is factually incorrect and has no basis in law. The "fact" on which this theory is based is that in seeking the exemption, the Commissioner promised Congress that the Raiders would never be moved from Oakland. In fact, plaintiff does not cite and the Commissioner did not make any such representation. The Supplementary Merger Agreement simply provided that no transfers of location of any present NFL or AFL franchise will be made "as a result of the combining of the operations of the member clubs of the two leagues in an expanded single league." (See Complaint, Exhibit B, Supplementary Agreement, p. 12.) The statement relied upon by plaintiff (Pl. Mem., p. 26) was Mr. Rozelle's "outline" of the "principal features" of the Merger Agreement which, as plaintiff notes, was made a part of the legislative record.

No transfer of any franchise was made as a result of the merger. But the Supplementary Agreement did provide an interim mechanism for future transfers: "No franchise

Senator SPECTER. We now call on the Honorable Dick Anderson, former president of the National Football League Players Association.

Mr. Anderson has experience in this area being a member of the Florida State Senate and having played with the Miami Dolphins, and he was president of the Players Association in 1976–77.

Mr. Anderson, we welcome you here. Your full statement will be made a part of the record.

We would also like to introduce Rocky Bleier who is with you, a man who has contributed enormously to the welfare of the Nation, the State and the city of Pittsburgh with his team, the Steelers. I have had an opportunity to work with Mr. Bleier on community service and we appreciate his presence here as well.

I am sorry, I do not have an identification of the third gentleman.

Mr. ANDERSON. I will introduce Bill Dudley, Bill "Bullet" Dudley, who graduated from the University of Virginia. Bill played 10 years with the NFL from 1945 through 1953, after serving 2 years in the U.S. Army Air Corps. He is a four term member of the Virginia House of Delegates representing Lynchburg. Bill is currently the president of the NFL Alumni Organization, an organization that is in each league city that has a football team, and is involved deeply in that community for community service, in getting retired players doing good things for the youth and raising money for charities in those local areas. Bill is also a member of the College Football Hall of Fame and was inducted into the Pro Football Hall of Fame in 1966.

STATEMENT OF HON. DICK ANDERSON, FORMER PRESIDENT, NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION, ACCOMPANIED BY ROCKY BLEIER AND BILL DUDLEY

Mr. ANDERSON. I will just hit the high points of my prepared statement so that you might ask questions of the three of us.

I did play for the Miami Dolphins for 10 years and currently am in the Florida Senate, and did spend 2 years as president of the Players Association.

I must say that I was concerned when first learning about this bill, if it did have an effect on labor negotiations, and I know that section 3(a) specifically excludes any mention of the antitrust area concerning wage negotiations or collective bargaining. In reading through the bill, I feel comfortable that it does not have any effect on bargaining and, frankly, cannot see a real reason for the union's opposition, other than the union does not agree with anything management does, not because of the second part of the bill and that is revenue sharing. The two main parts of the bill, one being the effect of a team leaving or the effect that the NFL owners can prevent a team from leaving a community—it does not address what happens when a team does leave a community or if the owners, by a three-quarters vote, allow a team to leave a community. That team, if they do leave a community—they are not exempt from the antitrust laws and they still would fall under any legal court action that would evolve from that move.

Second, in terms of revenue sharing, I think that revenue sharing is very productive and beneficial for all pro football teams. We constantly hear about Green Bay, and if they did not have revenue sharing or were not allowed to in the future, Green Bay certainly could not compete because of the size of the stadium or the area of their TV markets.

The other question that was brought up was in terms of cable TV, what effect this bill would have on cable TV in the future in relation to having revenue sharing, and there is a section in the bill that remains neutral on cable TV. I would venture to say two points, and I disagree with Howard Cosell on them. He feels that the NFL could take the production, that being the entertainment of professional football, and mold it and package it and sell it on cable and pay TV, and I would venture to say that Congress would act as fast as they ever have. If the NFL agreed to do that, you would pass a bill extremely fast to allow pro football to remain on free TV networks. I feel that the National Football League will be shown to general public on free TV, that you will continue to see that happen.

Senator SPECTER. Do you have filibusters on the floor of the Florida Legislature? Talking about speedy legislation.

Mr. ANDERSON. I do not see the Senate of the United States allowing the game of football to not be aired for free. I think you will see cable and pay TV in addition to free, and again that is a marketplace.

I also, in terms of cable TV—football is not a game without the fans and the fans make the game great. There is nothing more electrifying than when we were, say, in Pittsburgh, when we played the championship game. There is nothing more electrifying than seeing a full stadium. There is nothing worse than sitting there with a quarter of the stadium full. The game is just not the same. I would venture to say if they tried to do that and limit the crowds and make a production of it, it would be the demise of pro football.

Senator SPECTER. Thank you very much. We appreciate your testimony.

Mr. Bleier, would you care to supplement that testimony?

Mr. BLEIER. Senator, I think one of the main reasons that I have come here to help support Dick, only because of the fact that we played against one other, but I was an employee rep during the time he was president of the Players Association——

Senator SPECTER. Does he accurately characterize the championship game?

Mr. BLEIER. Unfortunately, that one game, yes, he did characterize it.

Senator SPECTER. Have you compared numbers of Super Bowl victories?

Mr. BLEIER. I did not want to bring that up and embarrass Dick.

Senator SPECTER. I was waiting for you to.

Mr. BLEIER. The one big thing I wanted to say, as far as Pittsburgh specifically, was that many of the great victories we had, and I have made mention of this many times on my sportscasts back in Pittsburgh, was due to the fans' support. I would think that over the years that we played, a good 30 percent of the games we won were because of the fans and the community that we have lived with. And I also think that because of the successful teams that we have had, that has rubbed off on the community and has created in them a pride in itself to become a substantial force in the cities of this United States, to the point where the image of Pittsburgh in the past was one of a loser, was one of smoke-filled areas, to one of a winner and even though we might not have won the last couple of years, that has still rubbed off, and the city has been a tremendous force because of that and because of the fact that the response that we as players received from the city of Pittsburgh has become a definite part of our life-style there. We have tried to make it a better city.

Senator SPECTER. I am interested in your statistic of 30 percent of the victories attributable as you see it to fan support.

Mr. BLEIER. I can remember the game that we played out in Los Angeles, the Super Bowl out there on neutral ground, our last one, which was really a home game for the Los Angeles Rams. I felt that it turned out to be a home game for the Pittsburgh Steelers because of our fans, that when we went to that stadium, all we saw was black and gold, and the support that was shown really lifted the ball players immensely. There is a game that I can point to and at home games. So it is very important for a team.

Senator SPECTER. Thank you very much.

Mr. Dudley, would you care to add anything? Pardon me for not recognizing you. Of course, I know the name and the reputation and the background.

Mr. DUDLEY. Thank you. But it is very common when you reach my age not to be remembered..

I will briefly state two things. No. 1, I truly believe that if the Washington Redskins—Mr. Cooke came out and said that the Redskins were leaving town, that I think some form of law would be passed to keep the Redskins in Washington. I have been watching them play and played against them and started watching them in 1938.

Senator SPECTER. Do you think equal protection of the law might be a little more unequal if it applied to the hometown team of the Congress?

Mr. DUDLEY. It is more than that, this bill I do not think would be here today if the league would have been allowed to make the decisions. I think that the Oakland Raiders would have stayed at home. I do not think that a bill like this would have been here if they had been able to so-called govern their own tribes and make their own decisions, and that it is only because of the decision they are here today, because that decision was rendered in the courts, that they could not make the rules themselves to abide by.

No. 2, it appears to me when you talk about retroactive or going back on decisions, that the case in Los Angeles against the league—that is under appeal, and as long as a case is under appeal, there really is no decision.

Thank you, sir.

Senator SPECTER. Thank you very much, gentlemen, for joining us.

Mr. **Anderson**. I just wanted to make one last point and that is similar to what Bill said, in terms of the league having rules to operate under.

As a member of the Florida Senate, we have a set of rules in terms of how we pass bills. You have a very stringent set of rules on how legislation is passed. And I think the NFL should have a set of rules and a method. They should have a set of rules that should be followed, and this is what this piece of legislation is all about.

Senator **Specter**. Thank you all very much.

[Whereupon, at 1:05 p.m., the committee adjourned, subject to the call of the Chair.]

[The prepared statement of Hon. Dick Anderson follows:]

PREPARED STATEMENT OF HON. DICK ANDERSON

I want to thank the Committee for inviting me to testify on the important legislation under consideration today. As a legislator myself, I have some sense of the pressures confronting the Members of Congress, and I commend you for taking time to consider what many of us believe is an important problem.

I am well aware of the issues involved in this legislation. Prior to becoming a member of the Florida Senate, I was a professional football player for ten years with the Miami Dolphins. I was a Pro Bowl selection in 1972, 1973, and 1974, and in 1976 and 1977 I was President of the National Football League Players Association. I have long been concerned that professional athletes, and particularly professional football players, must secure fair compensation for their services, and I would not support any legislation that would jeopardize the position of these athletes in labor matters. Quite comfortably with my strong feelings on this subject, I appear before you today to urge you and your fellow Members of Congress to pass quickly S. 2784, the Major League Sports Community Protection Act.

S. 2784 has much to commend it. It protects the interests of fans and local communities which support professional sports teams by making clear that league agreements on the location of league teams, which prevent team moves from such cities, are proper agreements and cannot be nullified under the antitrust laws. In so doing, S. 2784 recognizes that the member clubs of sports leagues are necessarily dependent upon each other in many areas of their business. No individual team, for example, produces an NFL game, and no single team produces the excitement of divisional races, "wild-card" battles, playoff games, and the Super Bowl. This excitement -- the NFL's product -- is created by the entire NFL.

I emphasize that S. 2784 does not protect sports league members from challenge under the antitrust if they make decisions to allow team moves. On this point the bill is neutral, and any principles currently applied to challenge such moves will remain in force.

I believe these team location provisions are vitally important to the public, to players, and to stability in professional sports. Others have commended this legislation for a wide variety of reasons, but I want to emphasize the importance of stable team-community ties from the players' perspective. Our careers as professional athletes can often be short, and we must then seek to establish new careers off the field, frequently in the community where we have played. Our opportunities to establish such careers are inevitably reinforced by strong team-community ties. In supporting this legislation in correspondence with many members of Congress, the Chicago Bears' extraordinary running back Gale Sayers, a member of the Pro Football Hall of Fame, has very aptly described this aspect of the legislation, and I would like to quote him:

> "It is evident that there exists strong economic commitments between a professional franchise and its home community. I personally think this commitment extends beyond this. Strong and rewarding relationships also develop between the players and the community. As a player, and now as a Chicago Bear and N.F.L. alumni, I felt and continue to feel a deep commitment and sense of loyalty to the Chicago community, the State of Illinois, and Bear fans everywhere. I am in fact a by-product of what [the team location provision of the legislation] addresses. My current employment and my involvement in Chicago community and civic affairs since 1965 indicates as much."

But I believe an equally important feature of this legislation is the provision protecting revenue sharing among member clubs of a sports league. It is revenue sharing which has enabled moderate-sized and small-sized cities in this nation to have sports teams in their community which can compete and win against teams from major cities such as New

York, Philadelphia, Chicago, and Los Angeles. I do not think there is a person sitting in this room who would seriously argue that the Green Bay Packers would even be an existing franchise in the League were it not for revenue sharing. Most people recognize that teams in such relatively small cities as Cincinnati, Tampa Bay, and San Diego would not be able to support winning football teams if it were not for revenue sharing. It is revenue sharing which has enabled fans everywhere, not just in larger cities, to go out to the park and see live professional football games. Passage of a bill which does not make clear that revenue sharing among sports teams is a permissible way of doing business would ultimately prove to be shortsighted, for such legislation would not provide the full protection needed by our nation's fans and cities.

One area of some controversy with respect to this legislation is the question of its effect on player and union rights in professional sports. I believe this important question has a simple answer: this bill will have absolutely no affect on player or union rights or privileges. S. 2784 is addressed to the two narrow points which I have discussed above. Section 3(a) of the bill explicitly provides that the bill will have no affect on any labor matters. This bill will simply prevent the desertion of communities and ensure that viable sports franchises will exist in the smaller communities in this country by allowing revenue sharing between teams.

The provision of the bill dealing with revenue sharing among the members of a league does not change any principle relative to wage scales or wage agreements. Any collective bargaining that might now occur, for example, on an allocation of revenues to player benefits, would clearly continue to be permissible under this bill.

I understand that time is growing short in this session of Congress. But I believe the Congress has expended a great deal of effort in looking at these problems. You now have before you a narrowly drafted bill to address a specific important problem confronting professional sports fans and home cities in professional sports home cities in this country. It would be unfortunate if this effort were to go for naught. I believe that these hearings and the hearings you have held in the past months have demonstrated that this legislation is in the public interest and that it is not antagonistic to player interests. Therefore, I urge you to give this legislation careful consideration and to pass this legislation in this session.

PROFESSIONAL SPORTS ANTITRUST IMMUNITY

MONDAY, SEPTEMBER 20, 1982

U.S. Senate,
Committee on the Judiciary,
Washington, D.C.

The committee met, pursuant to notice, in room 6226 Dirksen Senate Office Building, at 2 p.m., Hon. Strom Thurmond (chairman of the committee) presiding.

Present: Senators Laxalt, Specter, Simpson, Hatch, and Heflin.

Staff present: Stephen Cannon, Marcy Tiffany, Jock Nash, Boyd Hollingsworth, Bruce Cohen, Mary Louise Westmoreland, Thomas Parry, Katherine Zabrowski, Edward Baxter, Arthur Briskman and Burt Wides.

Senator Specter. Ladies and gentlemen, this hearing will come to order, the third in our series of hearings on possible antitrust legislation on Senate bill 2784, introduced by Senator DeConcini, and Senate bill 2821, which I have introduced.

The chairman of the Judiciary Committee could not be present at this particular moment, but he will be arriving soon and asked that we proceed.

The first witness listed, Congressman Dixon, is not with us at the moment, and as to the second panel, Mr. Al Davis, managing general partner of the Raiders—it says Los Angeles Raiders; I'm not sure—and Hon. Lionel Wilson, mayor of Oakland, Calif., we think that Mr. Davis should be here before Mayor Wilson testifies so we would like to move at this time to panel 3 to Mr. John F. Bassett of Toronto, Canada, and Mr. Dan Rooney, president of the Pittsburgh Steelers, if you gentlemen would come forward.

Before we proceed to that point, I would ask Senator Laxalt if you have an opening statement.

Senator Laxalt. No; I do not.

Senator Specter. Senator Heflin?

Senator Heflin. Well, I have no opening statement. However, I have been requested by Senator DeConcini to read his statement which he has prepared for himself.

[Senator Heflin read the following statement into the record:]

Prepared Statement of Hon. Dennis DeConcini, a U.S. Senator From the State of Arizona

Mr. Chairman, at the hearing last week several witnesses, as well as my good friend, Senator Biden, seemed to imply that my bill S. 2784 gives professional sports leagues complete control over all team movement decisions. That is absolutely wrong. I want the record to reflect the bill's true scope.

16-645 O—83——19

The bill specifically states that in section 2(a) that it affects the application of the antitrust laws when a league decides that a, quote, "member club of such a league shall not be relocated," end quote.

The bill does not refer to any relocation decision. It only covers a situation where a league disapproves a proposed move. Consequently, if a league approves the movement of a club, it would still be subject to antitrust lawsuits.

Others have correctly described my bill as a one-way street. It is triggered only when a league acts to protect a community by blocking the abandonment of a city by a pro team.

Senator HEFLIN. I ask that that appear in the record at the request of Senator DeConcini.

Senator SPECTER. For our first witness, we will call on Mr. Dan Rooney, president of the Pittsburgh Steelers, and Mr. Rooney, we do have your prepared statement which we thank you for and it will be made a part of the record in full, and we would ask in accordance with our regular practice, to the extent that you can, that you summarize the statement leaving the maximum amount of time possible for questions and answers.

STATEMENT OF DANIEL M. ROONEY, PRESIDENT, PITTSBURGH STEELERS, ACCOMPANIED BY STEVEN J. MILLER, COUNSEL, BECKER, PRICE & RHODES, AND JAY MOYER, COUNSEL TO THE COMMISSIONER, NATIONAL FOOTBALL LEAGUE

Mr. ROONEY. Mr. Chairman and members of the committee. I appreciate the opportunity to testify before you today in support of S. 2784. I want briefly to set the record straight on two subjects that relate to this legislation.

First, specific aspects of the Oakland Raiders relocation issue which were raised last Thursday before your committee by Los Angeles City Councilman David Cunningham. Second, NFL policies on team location and league expansions as they relate to your current hearings.

THE OAKLAND RAIDERS "SETTLEMENT"

On the first subject, I particularly want to comment on certain false charges and misstatements made to the committee by Mr. Cunningham. I have been in charge of the day-to-day business of the Pittsburgh Steelers since 1963.

I testified during the first trial of the pending Oakland Raiders litigation which ended in a mistrial in August 1981. Not once during these years of Raiders litigation have I heard or seen Mr. Cunningham directly involved. Prior to his appearance here last week, I had no direct dealings with Mr. Cunningham and he had no direct involvement with anyone representing the NFL concerning the subject of his testimony.

Whatever the source of his views, he simply did not have an accurate knowledge of certain NFL league meetings and discussions. I will, in the interest of time, avoid a point-by-point refutation of Mr. Cunningham's errors. But those involved with the Raiders abandonment of Oakland know that it is unjustifiable in terms of public policy and league principles, so they have pressed their case with character assassinations and revisionist history. They invoke, as Mr. Cunningham did, theories of an inner circle in the NFL, and suggest that all would be fine accept that the Raiders do not cozy up to NFL Commissioner Pete Rozelle.

Such charges are made simply to divert attention away from the public interest features of S. 2784, that over 40 mayors of American cities, including Pittsburgh's mayor, Dick Caliguiri, and so many of your colleagues have recognized.

Mr. Cunningham last week charged that the NFL clubs voted 17 to 10, at a meeting last March, to settle the Los Angeles antitrust litigation by keeping the Raiders in Oakland, and permitting Al Davis to own an expansion team in Los Angeles.

I attended the meeting in question. Mr. Cunningham's statements are false, and he or his anonymous source know that.

I would like to correct the record on three points, regarding that meeting. First, there was no settlement proposal then sponsored by the judge or agreed to by Davis and the Los Angeles Coliseum Commission, on the table, at that meeting.

Second, the decision to continue the effort to retain the Raiders in Oakland, was based solely on the merits of the dispute with the Raiders and the league's conviction that we are right in standing by Oakland. Third, the claimed 17-to-10 vote is pure fiction. It simply never occurred. Nor did Mr. Rozelle threaten to resign or do anything remotely suggesting such action, unless the clubs continued to litigate.

Most important to your current legislative inquiry, it is flatly untrue, as Mr. Cunningham put it, that the Los Angeles Coliseum and Davis had already agreed to a settlement proposal which would permit Al Davis to own an expansion team in Los Angeles, while leaving the Raiders in Oakland. No such settlement was ever agreed to by Davis or Los Angeles interests.

The case was simply not settleable on any such terms. This is confirmed by contemporaneous statements of Los Angeles and Raiders representatives, including Raiders attorney Joseph Alioto.

As have other Los Angeles officials and media, Mr. Cunningham charged last week that the Raiders litigation is based solely on Commissioner Rozelle's personal vendetta against Al Davis. As one of the 27 club presidents who have been deeply involved in this suit, I can tell you, this committee, that Al Davis' fight is not with the NFL commissioner. It is with league rules, to which the Raiders once fully and voluntarily agreed.

Mr. Davis' own club has contract commitments to all the other clubs in the NFL, and it's 27 partners do not believe that the antitrust laws should be used to permit a successful, well-sponsored team's abandonment of the community where it grew and prospered.

NFL EXPANSION AND THE WORLD FOOTBALL LEAGUE

I will close with comments on one final topic. I obviously do not know what Mr. Bassett will say, or whether he will support or oppose the present legislation. I do know Mr. Bassett was a principal owner-participant in the World Football League, which operated in 1974 and 1975. If Mr. Bassett now has complaints about the NFL's conduct, with respect to either the WFL or his former club in that league, he has completely reversed the view publicly expressed by WFL president Christopher Hemmeter, when the league folded in 1975.

Mr. Hemmeter, speaking on behalf of the WFL, publicly confirmed in a press statement, "that we have the highest regard for the National Football League, and their success in promoting the game of professional football made the formation of our league possible." Mr. Bassett currently is part of a antitrust lawsuit against the NFL. This lawsuit illustrates to me how far sports antitrust has become removed from the business reality, common sense, and consumer interest.

In 1974, the NFL announced plans for adding two franchises for the 1976 season. I was then chairman of the NFL expansion committee. The World Football League, of which Mr. Bassett was a founder, advised us that they would sue the NFL in an antitrust suit if we selected Memphis as one of our two expansion cities.

The NFL carefully avoided any interference with the World Football League. Tampa and Seattle were selected as the new expansion sites. When the World Football League collapsed in 1975, the WFL interests which formerly contended that it was a violation of the antitrust laws if the NFL expanded to Memphis then demanded that the NLF must expand to Memphis.

When the NFL club presidents concluded that such rapid expansion would be impossible and foolish, Mr. Bassett's WFL interests sued us in antitrust. Thus it was contended in 1974 that an NFL decision to expand to Memphis was an antitrust violation. However, that decision not to expand to Memphis in 1976 is now claimed to be an antitrust violation.

I appreciate this opportunity to appear in support of S. 2784, and I will be happy to answer any questions you may have at this time.

Senator SPECTER. Thank you, Mr. Rooney.

Let the record show that Mr. Rooney is accompanied by Steven J. Miller, Steelers counsel, Becker, Price & Rhodes, and also by Jay Moyer, counsel to the commissioner of the National Football League.

Mr. Rooney, there was quite a lot of concern, interest when Councilman Cunningham made the allegation at the hearings last week that there had been a settlement proposal which was agreed to, as he alleged it, by a 17 to 10 vote that the Oakland Raiders stay in Oakland and that Mr. Al Davis be given an expansion team.

And your testimony today is that there is absolutely no factual basis for that allegation, correct?

Mr. ROONEY. That is correct.

Senator SPECTER. Do you have any idea where such a rumor might have gotten started?

Mr. ROONEY. Well, during the time of the trial, there were efforts on the part of the judge to settle the case, and he called many people, including Mr. Rozelle, to see if a settlement could be brought up.

And when we would have league meetings, there would be discussions about the possibility of a settlement, but this particular settlement that was mentioned was never one that was part of the meeting and there was never anything such as a 17 to 10 vote in favor of such a motion. And, as I said, Mr. Davis himself did not agree with such a settlement.

Senator Specter. For many purposes, settlement discussions are not relevant and are not inquired into under a principle of law that parties should be free to explore settlement but that fact or an offer should not be made available to a factfinder or a jury because that might prejudice an ultimate outcome of a case.

The aspect of a settlement is germane most probably to congressional consideration of whether legislation should be made applicable to a pending matter such as the Raiders' situation.

We have an analogous situation before the Senate now on S. 995 which involves the question of applicability of contribution in antitrust cases to a pending matter. Sometimes phrased in terms of retroactive application or application to pending matters.

And there are some who believe that S. 995 ought not to be applicable to pending matters because sophisticated parties had an opportunity to settle the cases but, in effect, took their chances in complex litigation and after they are hit with big verdicts ought not to be bailed out, in effect.

So that the issue of a settlement discussion may well be relevant in our congressional consideration as to what happened behind the scenes in the litigation involving the *NFL v. the Oakland Raiders.*

And with that reasoning in mind, I would like to ask you, do ask you, whether there were settlement discussions between the Raiders and the league before the case went to the jury.

Mr. Rooney. I have heard that there were. There were discussions that occurred between parties. As I mentioned earlier, the judge did call the parties into his chambers singularly, if not together, on numerous occasions, and I know that when proposed witnesses went out to Los Angeles, he would call them in.

I was a witness and was supposed to go in to talk to him, but it never did occur. But I do know that he talked to Art Modell. I do know that he talked to Mr. Davis and to others.

Senator Specter. Mr. Rooney, I know that Mr. Jay Moyer is here with you to supplement your testimony, and if at any time you wish to turn to Mr. Moyer on any of the facts, I want you to feel free to do so.

Mr. Rooney. Mr. Moyer would like to add something.

Senator Specter. Fine.

Mr. Moyer. Senator, I could supplement Mr. Rooney's remarks to this extent. I was personally involved in numerous settlement discussions which were sponsored by the judge, the presiding judge in the trial.

Commissioner Rozelle, in my presence, and I outside his presence attended, I would say, seven or eight such meetings. Others were held among trial counsel for all parties.

We were advised prior to the second trial of the *Raiders'* case that if and to the extent that the National Football League was thinking about attempting or agreeing to a unilateral settlement with the Los Angeles Coliseum Commission alone the Raiders would do two things.

No. 1, they would persist in their suit against the NFL which would have left the league on by far the bigger of the two hooks on which we found ourselves, and they had even threatened to turn on the coliseum commission and sue them as well for a breach of some kind of understanding of cooperation.

In that climate, I find it impossible to believe that the case could have been settled on any basis, particularly the basis that Mr. Cunningham described, and I will second Mr. Rooney's remarks that both in that meeting, or outside that meeting, there was never a suggestion of that kind that was viable and there was certainly never anything approaching a vote evidencing any substantial sentiment to settle on the basis that Mr. Cunningham outlined, and it simply was not possible to do so.

Senator SPECTER. Would it have been necessary before the case could have been settled to submit it to a vote of the NFL owners?

Mr. MOYER. I think rather clearly it would, Senator, because it would have involved major commitments on the part of the league, and all significant decisions in the NFL are made on a vote of the membership, obviously.

Senator SPECTER. Was any settlement proposal submitted to a vote of the owners?

Mr. MOYER. Any specific proposal?

Senator SPECTER. Yes.

Mr. MOYER. No, sir, because there was not any on the table.

Senator SPECTER. Did Al Davis or the Oakland Raiders ever make a specific settlement proposal?

Mr. MOYER. They, to my knowledge, Senator, never approached anyone on the league's side and said, "Here is what we will take to settle." There were free-floating discussions at which ideas were thrown around, but always backed off of at some point with Mr. Davis or his attorneys saying what if.

At no point was there a statement of here is what it would take to settle the case.

Senator SPECTER. Was there ever a proposal made by the National Football League to the opposing side to settle the case?

Mr. MOYER. We never went and volunteered it, but we made it clear to the judge that we would cooperate in good faith efforts to explore the possibility of resolving the case. That, unfortunately, did not turn out to be possible.

Senator SPECTER. Was any settlement ever authorized by the ownership of the NFL?

Mr. MOYER. It never got to that point, as I said. There was no specific proposal that was made that was apparently or actually agreeable to all parties which was then brought to us and said, "Is this OK? Will this do it?"

Senator SPECTER. Mr. Moyer, when you say no proposal was made which was agreeable to all parties, you are really saying there that there is nothing which was done which was, in fact, agreed to but was there ever an offer made which, even though not acceptable to the other side, was a suggestion of settlement or an offer of settlement?

Mr. MOYER. I find it difficult to answer, Senator. I am not quibbling with you at all. I certainly do not mean to. There was never a point at which the league listed points A, B, C, and D and said we will do this or we think this should be involved in the settlement.

But we were always responsive to the approaches that were made, whether by the judge or by anyone on the other side, and we said on several occasions that we would test the sentiment throughout the league for a particular type of proposal, and this was, in fact, done.

Senator SPECTER. Can you give us an illustration as to what type of a proposal was tested?

Mr. MOYER. As I best recall it, Senator, we did poll the membership on the question of whether the idea of an expansion team in Los Angeles, keeping the Raiders in Oakland, and little more would be acceptable to the clubs in the league.

Senator SPECTER. Did you say "little more" or "a little more"?

Mr. MOYER. Little more or a little more, as you choose, either one would be accurate.

Senator SPECTER. What kind of little more did you have in mind?

Mr. MOYER. I believe that at that point the coliseum commission was urging that a rather substantial money payment be made to it by the National Football League.

Senator SPECTER. How much?

Mr. MOYER. I really could not say. I am trying to recall a time now that goes back more than a year, and I cannot be specific. Ultimately, Senator, the figure mentioned by the coliseum was in excess of $7 million.

Senator SPECTER. So that would have been to keep the Raiders in Oakland and an expansion team in Los Angeles.

Mr. MOYER. Not at any point was that clear because the remaining condition as of immediately before the trial was, as articulated by tax coliseum commission's chief negotiator, that Al Davis be made happy.

Senator SPECTER. How would you define that?

Mr. MOYER. By all the pronouncements that we heard publicly from Mr. Davis and his attorneys and privately, that would have meant taking the Oakland Raiders to Los Angeles, and that was not something that was or is acceptable to the National Football League.

Senator SPECTER. Was it unacceptable to Mr. Davis that he would have an expansion team in Los Angeles and keep the Raiders in Oakland?

Mr. MOYER. In answer to that, Senator, if I might, I would quote from Mr. Joseph Alioto in the immediate pretrial period. I am quoting Mr. Alioto now as reported in a Los Angeles newspaper.

"They dangled that expansion franchise," meaning obviously in Los Angeles, "in front of Al Davis' face and he will not be separated from the Raiders. He made that clear," unquote.

That, I think, fairly summarizes the position of Mr. Davis as it was conveyed to us.

Senator SPECTER. So what you are saying is that Al Davis would have settled for nothing less than taking the Oakland Raiders to Los Angeles?

Mr. MOYER. No contrary position was ever expressed to us by Mr. Davis or his attorneys.

Senator SPECTER. What was the best suggestion or offer or idea advanced by Mr. Davis from his side of the bargaining table?

Mr. MOYER. It was very difficult to pinpoint one, Senator, in the sense that they were constantly shifting. Everytime a certain set of points were made and people on our side would think that this might be the laundry list, the list would grow.

But the key to us was the fact that the Raiders remain where they have grown and where they have prospered so magnificently on the field and financially for two decades, and that never seemed to be an acceptable alternative to Mr. Davis.

Senator SPECTER. I would defer to the chairman at this time.

The CHAIRMAN. Senator Specter, do you have any further questions?

Senator SPECTER. No, Mr. Chairman.

The CHAIRMAN. Senator Laxalt, do you have any questions?

Senator LAXALT. I do not think so, Mr. Chairman.

The CHAIRMAN. The Senator from Alabama, Senator Heflin, do you have any questions?

Senator HEFLIN. I do not think so, Mr. Chairman.

The CHAIRMAN. Senator Simpson, do you have any questions?

Senator SIMPSON. Not at this time, Mr. Chairman.

The CHAIRMAN. Well, it seems that there are no further questions. We wish to thank you gentlemen for your appearance here and the testimony you have given to us. I am sure it will be an addition to the record so we can excuse you now and bring up the next witness.

Senator LAXALT. So that the record will be clear, Mr. Chairman, with respect to this particular panel, Mr. Rooney, our disinclination to ask questions here is not based upon our not being concerned about where you are on the bills but so far as we understand you were brought here for the limited purpose of meeting the councilman's testimony.

It is for that reason and that reason alone why we are passing in terms of questions. I want you to understand that.

The CHAIRMAN. Mr. Rooney, I might ask you a few questions here. Do you believe that S. 2784 will provide any protection to municipalities if the NFL does decide to permit a team to move?

Mr. ROONEY. It is my understanding, Senator, that S. 2784 does not change the status at all if the league should decide to let a team move, that in that regard that we would be subject to all the normal—subject to the law.

The CHAIRMAN. Now, whatever the courts and commentators might have thought the law was or should have been before the *Oakland Raiders* case was decided, now that the court has ruled in that case and the Raiders have moved to Los Angeles and begun playing there, is it fair to say that S. 2784 would significantly change the rules after the fact?

Mr. ROONEY. Well, Senator, there is some confusion, and that is the thing that we are most concerned about with this phase of the antitrust laws. You have two courts in the State of California.

You have the Federal court saying that the Oakland Raiders are permitted to move, and you have the California Supreme Court saying that the city of Oakland has the right under eminent domain to keep them there, and that is our dilemma in that we are not sure where we are.

We are in two places, and we think that this would clear it up.

The CHAIRMAN. There was previous testimony that several teams used the vacancy in Los Angeles to pressure advantageous terms out of their home cities. Even Mayor Schaefer testified that the owner of the Colts visited Los Angeles and raised the specter of a move from Baltimore.

Did the NFL play any role in trying to discourage such tactics?

Mr. ROONEY. I think Mr. Moyer should answer that, sir. He is Commissioner Rozelle's counsel.

Mr. MOYER. Senator, the role played by the NFL with regard to Baltimore was that Commissioner Rozelle has met with Governor Hughes of Maryland, with Mayor Schaefer, and with others in an effort that continues today to find an accommodation between the needs of the Baltimore Colts and the needs of the city of Baltimore and the Greater Baltimore area.

That, I think, indicates that actions of the league can speak louder than occasion intemperate remarks of a particular club owner.

The CHAIRMAN. How do you view the NFL's previous history with respect to permitting teams to move with NFL approval?

Mr. ROONEY. Well, there again, I think that the record speaks for itself, that to my knowledge the only team that was permitted to move was the Chicago Cardinals who are now in St. Louis which was a great thing that everybody was for.

Since that time in 1960, there have been no teams moved in the National Football League that have left their community.

The CHAIRMAN. Do you think that the collapse of the WFL is a significant factor when determining whether refusal to put a franchise in Memphis is an antitrust violation?

Mr. ROONEY. No, I really do not.

The CHAIRMAN. Mr. Bassett claims that his team has both community support and ample financial stability to function as an effective member of the NFL in Memphis. Do you disagree with this assertion and could you explain to us why the NFL has refused to expand in Memphis?

Mr. ROONEY. Well, Senator, I think that what actually happened, and if there was any confusion on my part, it was because of the actual dates of what occurred, actually the World Football League had already failed or collapsed at the time Mr. Bassett came to the National Football League and asked for an expansion team. At that time, we had already expanded to Tampa and Seattle, and we were proceeding with orderly expansion and getting the teams up and trying to promote those two teams in those two cities.

And Mr. Bassett came in with a situation of saying, you know, immediately come to Memphis and just take our team, which would have meant that the National Football League would have only had 29 teams and we would have either been forced to expand to a 30th city, another city, or operate with 29 teams which would have been unwieldy and really we think impossible.

So we think that that would have been anything but orderly for the National Football League to do.

The CHAIRMAN. Any other questions from any of the other members of the committee?

[No response.]

The CHAIRMAN. There appears to be none so we will now excuse you gentlemen and thank you again for your appearance.

I understand the Senator from Nevada has to leave in a little bit and he wants to be here when Mr. Davis testifies so, Mr. Bassett, we will call you in just a few minutes.

[Mr. Rooney's prepared statement and attachments follow:]

PREPARED STATEMENT OF DANIEL M. ROONEY

Mr. Chairman, and members of the Committee, thank you for giving me the opportunity to testify today in support of S. 2784.

Briefly, I will summarize my involvement in professional football and the National Football league. I joined the Pittsburgh Steelers football club on a full-time basis in 1955 immediately after my graduation from Duquesne University in Pittsburgh, and have been employed by the club ever since. In 1963, as Vice-President, I took charge of the day-to-day operations of the football team. In 1975, I succeeded my father, Arthur Rooney, as President of the Steelers, and hold that position today.

During my 27 years in the National Football League, I have seen the NFL grow in membership from 12 teams in 1955 to 28 teams located today in virtually every region of this country. I have also seen the NFL member clubs become increasingly committed to, and dependent on, the sharing of revenues from such sources as network television. And I have witnessed a period of unprecedented franchise stability, where no well-supported club has been permitted to relocate from its home area. During my tenure with the Steelers, I have also had the good fortune of working on numerous occasions with the NFL League office and with the League's Commissioner, Pete Rozelle.

Today I want briefly to supplement the record, and to set it straight, on two subjects: (1) certain aspects of the Oakland Raiders relocation issue; and (2) NFL policies on team location in the context of expansion as they relate to your current hearings.

On the first subject, I particularly want to comment on certain false charges and misstatements made to the Committee last week by Los Angeles City Councilman David Cunningham. On the second subject, I suspect that my remarks will take issue with at least some of the views of another witness today, Mr. John Bassett, who is currently suing the NFL under the antitrust laws in a suit involving NFL expansion decisions.

1. The NFL's Decision to Continue Raiders' Operations in Oakland

Prior to his appearance here last week, I had no direct dealings with Mr. Cunningham, and he had no direct involvement with anyone representing the NFL concerning the subjects of his testimony. Nor has he been a lead Los Angeles participant in the effort to have the Oakland Raiders abandon their community. Whatever the sources of his views, however, he simply did not know what he was talking about when he described certain NFL League meetings and decisions. He has also apparently permitted himself to be used to parrot defamatory remarks that the Oakland Raiders and their allies have concocted and spread through the media at every opportunity.

I will speak to you today about NFL positions based on my participation in the key events Mr. Cunningham misdescribes. I have also reviewed those events with others in the League.

Due regard for brevity precludes a point-by-point refutation of Mr. Cunningham's errors. But I cannot help observing that his statement reflects the technique of the "big lie" -- the tactic that if your accusations are numerous enough, outrageous enough, and repeated often enough, they will take on a life of their own. In other words, throw enough mud and some of it may stick. That is both the spirit and the letter of Mr. Cunningham's statement; it is a ham-handed effort to discredit S. 2784 both by misdescribing the terms of the bill and by impugning the motives and character of the NFL's member clubs and the League's Commissioner.

S. 2784

As for S. 2784 itself: first, if Mr. Cunningham had fairly described S. 2784, he could not have stated to the Committee that the bill would not protect municipalities because it "simply provides that the NFL's decision on whether to let a team move cannot be reviewed in court." As the Committee knows, the explicit terms of S. 2784 refute this: S. 2784 applies only to sports league decisions that teams "shall not be relocated."

Second, applying S. 2784 to the Raiders pending relocation would hardly amount, as Mr. Cunningham claimed, to "changing the rules after the game has been played." Just the opposite is true: congressional legislation would simply confirm what the courts and serious legal commentators had thought were the controlling standards on team location matters -- until they were changed for the benefit of Los Angeles' interests in a Los Angeles forum. Further, S. 2784 applies to the pending Raiders relocation because, among other things, the stalemated litigation over the Raiders' move has produced an irreconcilable conflict between federal and state law.

The California Supreme Court recently held that the City of Oakland could condemn the Raiders franchise in eminent domain to prevent it from abandoning Oakland. The Los Angeles authorities even filed a federal court suit against the City of Oakland because they recognize that this decision of California's highest court may eventually require the Raiders to operate in Oakland. In short, because the present issue involves prior congressional policies, conflicting principles of state and federal law, and litigation that will clog both state and federal courts for years, it is both fair and essential for Congress to clarify the law of the land.

The Committee should also be aware that while Mr. Cunningham sought to oppose S. 2784 because it would supposedly change the rules in midstream, his city (Los Angeles) and the Raiders have been hard at work with a massive effort in the California legislature to obtain retroactive amendments to California law wiping out the City of Oakland's eminent domain rights to buy the Raiders, as confirmed in the decision of the California Supreme Court. On this point, let me refer you to the recent statement of Representative Stark who described this Los Angeles and Raiders legislative blitzkrieg:

> "Now, however, it is evident that the Oakland Raiders intend to take further steps to deprive the Oakland community and its taxpayers of their rights under State law. The Raiders, assisted by Los Angeles' interests who seek to take the team from Oakland to Los Angeles, have been in the California legislature seeking special interest, retroactive amendments to the California eminent domain statute to overturn the supreme court's ruling and to preserve the Raiders' opportunity to walk out on Oakland merely for higher profits elsewhere. This punitive measure would strip the Oakland community of its right under State law to protect the multimillion-dollar taxpayer investment in the Oakland-Alameda Coliseum made at the Raiders' behest in 1965. In my view, we in the Congress have an obligation to act before the overriding public interests of communities and taxpayers can be defeated in this manner." (Cong. Rec., House, H. 6973, 9/14/82)

The supporters of the Raiders' abandonment of Oakland know that it is unjustifiable in terms of public policy, legal principle, and equity, so they press their case with character assassination and revisionist history. They invoke, as Mr. Cunningham did, theories of the "inner circle in the NFL" and suggest that all would be fine except that the Raiders do not "cozy up to Pete Rozelle . . . ." Such charges demean these hearings; they are made simply to divert attention away from the public-interest features of S. 2784 that over 40 mayors of American cities and so many of your colleagues have recognized.

The NFL has long been, and remains, committed to team franchise stability. Mr. Cunningham had a lot to say -- all based on absolute hearsay -- about the NFL's dealings with many cities. He talked about pressures on Baltimore by the NFL; he talked about St. Louis, Buffalo, Minnesota, and other cities. We simply ask this: can you reconcile Mr. Cunningham's charges about NFL "extortion-like pressure" on Baltimore with the strong support given to S. 2784 by Baltimore's Mayor Schaefer before this Committee earlier during the same hearing? Do you credit Mayor Schaefer's support for S. 2784, or will you accept Mr. Cunningham's absolute hearsay?

We also ask: can you reconcile Mr. Cunningham's hearsay charges concerning NFL pressure on a so-called "recalcitrant" Minnesota legislature with strong support for S. 2784 by the Mayors of Minneapolis and St. Paul expressed by them to Members of Congress? And can you reconcile Mr. Cunningham's charges with the NFL's agreement, as a League, to guarantee an NFL franchise in Minnesota for the duration of the 35-year bond repayment period necessary for construction of the new Hubert H. Humphrey Metrodome in Minneapolis? We have furnished a copy of this League agreement to the Committee, and we ask the Committee to consider the League's actions in Minnesota when it assesses Mr. Cunningham's rhetoric.

Let me comment further on Mr. Cunningham's baseless attack on the League and its Commissioner.

The Fictional Settlement Supposedly Keeping the Raiders In Oakland

The attack centers on a claim that the Raiders-NFL litigation could have been settled, but that the NFL vetoed such a settlement at an NFL meeting last March. Mr. Cunningham thus charged that the clubs "voted 17-10" to settle the Los Angeles antitrust litigation by keeping the Raiders in Oakland and permitting Al Davis to own an expansion team in Los Angeles. It is further claimed that the Los Angeles Coliseum and Davis had both agreed to this, but that when Commissioner Rozelle "threw a tantrum and threatened to resign," the clubs reversed field and "staged a phony 27-0 vote against settlement."

I attended the meeting in question. Mr. Cunningham's statements are false -- and he or his "source" knows that. So I tell you three things categorically about that meeting:

First, there was no "settlement proposal" then sponsored by the judge; there was no settlement then agreed to by Davis and the Los Angeles Coliseum Commission; there was a thorough evaluation of settlement possibilities -- none of which was promising; and there was a unanimous determination to continue the effort to retain the Raiders in Oakland;

Second, that decision was based solely on the merits of the dispute with the Raiders and the League's conviction that we are right in standing by Oakland; and

Third, the claimed 17-10 vote is pure fiction; Mr. Rozelle did not "threaten to resign" (or do anything remotely suggesting such action) unless the clubs continued to litigate; nor did the Commissioner "throw tantrums" -- that is merely a childish suggestion from a public official, Mr. Cunningham, who one might expect to know better.

Most important to your current legislative inquiry, it is flatly untrue, as Mr. Cunningham put it, that "the Los Angeles Coliseum and Davis had already agreed to" a settlement proposal "which would permit Al Davis to own an expansion team in Los Angeles, while leaving the Raiders team in Oakland." No such settlement was ever agreed to by Davis or Los Angeles interests; and the case simply was not settleable on any such term. This is confirmed by contemporaneous statements of Los Angeles and Raiders representatives.

The NFL meeting in question occurred in March of 1982. Shortly before the meeting, Mr. Davis' attorney, Joseph

Alioto, publicly rejected settlement possibilities, stating:

> "Alioto said Rozelle himself was involved in such talks.
>
> "'Pete Rozelle has personally led the negotiations for the NFL,' said Alioto. 'The critical meeting took place [recently]. They dangled that (expansion) franchise in front of (Raiders' managing general partner) Al Davis' face and he will not be separated from the Raiders. He made that clear.'" (Los Angeles Herald Examiner, 3/11/82)

Two days later, the Los Angeles Times reported that there were numerous settlement possibilities then under consideration, but none had been agreed to. It also reported that the Los Angeles Coliseum Commission itself was plagued by internal conflicts as to settlement alternatives and that Mr. Davis had not agreed to any settlement arrangements. As for any settlement that would "leave the Raiders in Oakland," chief Los Angeles Coliseum negotiator William Robertson told the Times that, as the writer put it, "it would be up to Davis to decide, and no deal would be cut unless he said yes." But, as his attorney's comments made clear, Davis would have none of it.

At the core of the Cunningham statement are two preposterous allegations: that "the true purpose of S. 2784 is to carry on a personal vendetta of Pete Rozelle," and that "Mr. Rozelle is obsessed with waging a personal war against Al Davis." This is a carefully cultivated fiction created and fostered by Davis himself as a tactic to divert attention from his actions in pirating the Raiders out of Oakland.

Al Davis' fight is not with the NFL's Commissioner. It is with League rules to which the Raiders once fully and voluntarily agreed; with his own club's contract commitments to all other clubs in the NFL; and with his 27 partners who do not believe the antitrust laws should permit a successful, handsomely supported team to abandon the community where it grew and prospered. Above all, his dispute is with the principle that the emotional and financial commitments of fans and communities count for something and should be respected by the operators of professional sports teams.

The Public Interest and S. 2784

Why then do the Raiders regard the move to Los Angeles as so important? Mr. Cunningham never touched on the answer, but Mr. Davis has suggested his reasons elsewhere. The Committee should consider those reasons when it evaluates the public interest aspects of S. 2784. They suggest that Mr. Davis dislikes S.2784 because he sees personal benefits in Los Angeles, for example, in pay television. As Davis told a sportswriter several years ago,

> "Pay-TV is where it's going to be all at in a few years. It won't matter the size of the stadiums. But can you imagine two million viewers paying 10 bucks a head? That means the smart pro clubs have to be in the big TV markets. That's why we're thinking about a move to Los Angeles." (St. Paul Pioneer Press, 4/4/79)

And William Robertson, the Los Angeles Coliseum Commission's own chief representative in dealing with Mr. Davis, described Davis' pay TV intentions in sworn testimony as follows:

> "And in trying to analyze in my own mind why Al Davis would like to come to Los Angeles, recognizing that they get full capacity in the Oakland stadium . . . . In trying to in my own mind figure out why Al Davis would want to come to Los Angeles, knowing that as far as attendance is concerned they fill up the Oakland stadium, he stated that he saw a very significant reason . . . . One of the reasons he would like to come here he saw significant pay TV somewhere down the line. It is his theory that in four or five years professional football will be really into pay TV, and this being a very large market that this would be an attractive place to be."

Congressional Policy In 1966

Let me comment on a final aspect of Mr. Cunningham's statement in which he twists both the League's position and the record of Congress' hearings on the 1966 NFL-AFL merger statute. Mr. Cunningham noted that Mr. Rozelle stated to your Committee that the NFL "made private and public commitments to Congress that no franchise, in particular the Oakland Raiders, would be moved so long as it remained well supported in its home community." Mr. Cunningham states that Mr. Rozelle has made such suggestions "when it suited his purposes" to do so and that "Congress never asked for and Rozelle never made any such commitment." Mr. Cunningham also says that the NFL, in a lawsuit in San Francisco, took the opposite position. None of Mr. Cunningham's statements are accurate.

The NFL's position is clear, and it essentially involves two points:

First, in hearings in October 1966 before the House Antitrust Subcommittee on the 1966 merger statute (S. 3817), the NFL set forth a statement of the terms of the merger between the member clubs of the NFL and the American Football League. This statement specifically contains representations about the operations of teams in the "metropolitan areas" surrounding New York and San Francisco-Oakland. One such representation was that "all present member clubs of both leagues will remain in their present locations," including (as to the Bay Area) "the San Francisco 49'ers in San Francisco and the Oakland Raiders in Oakland." These representations are attached to this statement. Mr. Cunningham simply ignores these representations -- as, indeed, he must.

Second, these representations were made because, as Mr. Rozelle put it in his testimony before this Committee, "there were serious congressional concerns, expressed both publicly and privately, about possible franchise transfers." The NFL believes that S. 2784 should be enacted to give concrete effect to the representations and commitments made to Congress by the two leagues in 1966. But the NFL does not believe that the 1966 congressional proceedings constitute some form of unique private contract between Congress and the NFL, specifically enforceable in court by the League or supposed third-party beneficiaries, such as the Oakland Raiders season ticket holders who sued the Raiders in 1980 to keep them in Oakland. It was to this point that the NFL brief filed in San Francisco spoke, and that brief did indeed assert what seems apparent -- that no private contract, enforceable in a federal court, was made between the NFL and Congress in 1966. That issue is, however, irrelevant to whether Congress should enact S. 2784 to confirm that sports leagues have the authority to continue the operations of successful and profitable clubs in their existing communities.

2. NFL Policies on Team Location: The Expansion Experience

The team location and revenue sharing provisions of S. 2784 are of fundamental importance to future expansion prospects in professional sports. This is not because S. 2784 grants any antitrust immunity for league expansion decisions. It is, instead, because S. 2784 preserves operating principles and policies that make NFL expansion possible. The NFL's most recent expansion took place with the creation of new NFL clubs in Tampa Bay and Seattle, commencing with the 1976 season. The relationship of S. 2784 to such NFL expansion has been clearly stated by Congressman Dicks of Washington, a cosponsor of the present legislation, who recently described that relationship as follows:

> "This legislation protects the ability of sports leagues such as the NFL to continue policies that have made NFL expansion to cities like Seattle possible. The bill authorizes leagues to keep teams in communities where the league determines the team can operate successfully. In the context of expansion, this provision will permit the NFL and other sports leagues to determine that expansion teams should operate on a

> long-term basis in the expansion communities selected by the league. The legislation also protects revenue sharing among the teams of a league, and such revenue sharing in the NFL -- for example, the equal division of all network television revenues among the 28 NFL teams -- makes it possible for new communities, such as Seattle and its partner expansion team, Tampa Bay, to participate in the NFL on an equal footing with the established teams. In short, if the NFL policies protected by this legislation cannot continue to be pursued by the league, one would have to question whether a community such as Seattle would ever have been chosen as an NFL franchise city -- and one will have to question whether future NFL expansion to other cities of similar size can take place." (Cong. Rec., House, E4112, 9/9/82.)

I obviously do not know whether Mr. John Bassett, who is also appearing before your Committee today, will support or oppose these aspects of the present legislation. Mr. Bassett was a principal owner-participant in the World Football League, which operated in professional football in 1974 and then commenced playing a 1975 season schedule. However, the World Football League terminated its operations in October, 1975, due to overall poor attendance and continuing financial problems of its franchises. If Mr. Bassett now has complaints about the NFL's conduct with respect to either the WFL or his former club in that League, he has completely reversed and repudiated the view publicly expressed by the WFL in 1975, shortly after its abortive efforts had collapsed. Then, in announcing the WFL termination, the President of the WFL, Christopher Hemmeter, publicly confirmed in a press statement:

> "We have the highest regard for the National Football League. Their success in promoting the game of professional football made the formation of the league possible."

And Mr. Hemmeter then privately wrote to Commissioner Rozelle, stating in part:

> "I believe that the National Football League is a great credit to the industry of professional sports."

Subsequently, in the course of his lawsuit against the NFL, Mr. Bassett himself confirmed that he shared these views.

As for Mr. Bassett's antitrust lawsuit against the NFL, it illustrates to me how far sports antitrust has become removed from business reality, common sense, fairness, and consumer interests. It also illustrates how leagues can find themselves between the proverbial "pillar and post" no matter what they do:

In 1974, the NFL had announced plans for bringing into existence two new franchises for the 1976 season. The World Football League, of which Mr. Bassett was a founder, was then in the process of organizing, and WFL interests advised us that they would sue the NFL in antitrust if the NFL selected Memphis as one of its two expansion cities. I was then Chairman of the NFL's Expansion Committee, and the NFL carefully avoided any interference with the World Football League, instead choosing Tampa Bay and Seattle as its expansion sites. When the World Football League collapsed in 1975, the WFL interests, including Mr. Bassett, which formerly contended it was a violation of the antitrust laws if the NFL were to expand to Memphis then demanded that the NFL must expand to Memphis. When we concluded that such rapid expansion would be impossible and foolish, the WFL interests sued us in antitrust. Thus, it was contended in 1974 that an NFL decision to expand to Memphis in 1976 was an antitrust violation; and failure to expand to Memphis in 1976 is also now claimed to be an antitrust violation.

I appreciate this opportunity to appear in support of S. 2784. Thank you.

PROFESSIONAL FOOTBALL LEAGUE MERGER

HEARINGS

BEFORE

ANTITRUST SUBCOMMITTEE

(Subcommittee No. 5)

OF THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

EIGHTY-NINTH CONGRESS

SECOND SESSION

ON

S. 3817

TO AUTHORIZE THE MERGER OF TWO OR MORE PROFESSIONAL FOOTBALL LEAGUES, AND TO PROTECT FOOTBALL CONTEST BETWEEN SECONDARY SCHOOLS FROM PROFESSIONAL FOOTBALL TELECASTS

AND SIMILAR BILLS

H.R. 17661, H.R. 17675, H.R. 17679, H.R. 17698, H.R. 17765, H.R. 17791, H.R. 17806, H.R. 17929, H.R. 17977, H.R. 18038, H.R. 18039, H.R. 18040, H.R. 18047, H.R. 18060, H.R. 18120, H.R. 18121, H.R. 18123, H.R. 18124, H.R. 18131, H.R. 18145, H.R. 18177, H.R. 18198, H.R. 18226, H.R. 18253, AND H.R. 18424

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The Chairman. We will hold a meeting so that the gentleman will be satisfied.

Mr. Cramer. If we do not act sometime, Mr. Chairman, say tomorrow for instance, we do not have these meetings set tomorrow.

The Chairman. We have a holiday called Columbus Day. Some of the members must go back to their homes.

Mr. Cramer. I would hope, Mr. Chairman, you would set an executive session following Thursday's hearing, sometime. You cannot say, yes, we are going to do it and then not do it. It looks like what are you doing is you are saying——

The Chairman. If two men ride a horse, one man must ride behind. I am riding this horse.

Mr. Cramer. I am just trying to help you get the horse moving.

The Chairman. The committee stands adjourned until Thursday at 10 o'clock.

(Whereupon, at 12:10 p.m., the subcommittee recessed, to reconvene at 10 a.m., Thursday, October 13, 1966.)

(The Recapitulation of Basic Terms Agreed to by the Member Clubs of the NFL and the AFL; Recapitulation of Terms Agreed to by the Member Clubs of the NFL and the AFL Having Particular Relation to Two-Team Operations in New York City and the San Francisco-Oakland Area; letter dated October 4, 1966, from Hamilton Carothers, to the Antitrust Division of the Department of Justice; Joint Committee Agenda; Joint Committee Meeting Minutes July 20, and July 21, 1966; Comparison of NFL–AFL Constitution and Bylaws; Minutes of the Annual Meeting, June 30, 1966; Resolution adopted July 1, 1966; Memorandum re NFL–Atlanta Transaction; and several related letters referred to are as follows:)

Accompanying is a statement of the terms of the agreement between the member clubs of the two leagues. These are the terms which were negotiated on behalf of the two leagues this spring and summer and basically accepted by the clubs of the two leagues in principle if not in final statement. Agreements embodying these terms have not yet been formally executed.

The basic agreement is set forth in the first document. The second document sets forth additional terms relating to single league operations in the two-team cities. The additional items state understandings between the teams in the same metropolitan areas which are of minor consequence and have no basic bearing on the inter-league agreement.

A number of additional understandings will be put in writing when time permits. For example, there will be to be formal agreements with respect to the monetary payments. The Joint Committee will also have certain responsibilities in developing additional understandings to be effective during the interim period, some of which will have to be cleared with the league membership. None of these will have any antitrust significance independent of the combination itself and, in most cases, no antitrust significance whatever.

Hamilton Carothers.

Recapitulation of Basic Terms Agreed To by the Member Clubs of the National Football League and the American Football League

(1) Pete Rozelle will be Commissioner of the expanded league. Until June 1, 1976, any successor to Pete Rozelle as Commissioner must be approved by the affirmative vote of at least 12 of the 15 present member clubs of the NFL. All other vote requirements and procedures for the selection of a successor to Commissioner Rozelle will be determined by mutual agreement of the two leagues.

(2) It is contemplated that all present member clubs of both leagues will remain in their present locations, including the New York Giants and New York Jets in New York City, the San Francisco 49'ers in San Francisco and the Oakland Raiders in Oakland.

(3) Because of individual league contract commitments, full unification of all phases of the expanded league's operations cannot be achieved before 1970. Beginning in 1970, there will be:

(*a*) A unified league schedule providing for mixed regular season games between clubs of the two present leagues (in connection with any such future realignment of the league, factors of geography, natural rivalries, stadium size, gate attendance, weather circumstances, team strength, and conflicts with baseball in the use of league stadiums shall all be taken into consideration in such fashion as not to unfairly prejudice any franchise of the realigned league);

(*b*) Full integration of the player pension plans of the two leagues to provide for a common plan applicable to all players of the expanded league;

(*c*) Equal division of all regular season and preseason network television income among all clubs of the expanded league; and

(*d*) Studies of the feasibility of adding at an early date two additional franchises (in addition to the two franchises referred to in Paragraph (4)(m) to be added in 1967–68) for a combined league total of 28 franchises in 27 cities.

(4) During the interim period prior to 1970:

(*a*) Pete Rozelle will be Commissioner over both leagues.

(*b*) The two leagues will remain as separate entities for general administration purposes except in areas where unification of their operations has been achieved during this period.

(*c*) A joint committee will be established and the members thereof will be appointed by each league with Commissioner Rozelle as Chairman. The purpose of this committee will be—

(1) to develop the mechanics and establish the principles under which the plan will be implemented;

(2) to resolve inconsistencies between the present NFL and AFL constitutions and bylaws with the objective of achieving a common Constitution and Bylaws at the earliest possible date.

(*d*) Until 1970, each league will have independent responsibility for its own television arrangements, including independent determination of its own patterns of telecast.

(*e*) Regular season games between teams of the two leagues will not be played before 1970 because of existing television contract commitments.

(*f*) Pre-season games between teams of the two leagues will be played beginning in 1967. For 1967, 1968, and 1969, respectively, each AFL club will play at least one pre-season game per year with an NFL team. To the extent that telecasts of such games are determined to be feasible, pre-season games between teams of the two leagues may be telecast to the visiting team's home city only.

(*g*) Player trades between clubs of the two leagues will not be permitted before 1970.

(*h*) A championship playoff game between the champions of the two leagues will be played each year beginning in January 1967. Site and date of this game shall be selected by the two leagues. Television arrangements for this game will be the responsibility of Commissioner Rozelle. A formula (to be mutually agreed upon) shall determine the allocation of the income to player shares, the pension funds of the two leagues, the participating clubs, etc. Remaining income resulting from this game will be divided equally between the two leagues.

(*i*) A common draft will be held beginning in January of 1967. Priority of selection will be determined by each club's loss-won record during the 1966 season without regard to present league affiliations.

(*j*) Individual clubs of the respective leagues will retain their negotiation rights with respect to all previously drafted but unsigned college players, *i.e.*, "redshirts".

(*k*) Through additional funding by the AFL, it will bring its player pension plan into conformity with the NFL's pension plan as in effect on June 1, 1966. This is to be fully accomplished by September 1, 1970.

(*l*) By September 1, 1970, the AFL will have in effect pension plans for its front office employees and coaches comparable to those now in effect for the NFL.

(*m*) Of the two new franchises to be added by the expanded league for operation no later than 1968, one will be stocked with players furnished by the present AFL clubs and will play its regular season games within the present AFL league structure during the period prior to 1970. The other will be stocked with players furnished by the present NFL clubs and will play its regular season games within the present NFL league structure during the period prior to 1970. The two leagues will mutually agree on a plan that will stock these two new franchises with players in a manner that will bring the respective teams in on a par as relates to player strength and financial considerations. The two leagues will also mutually agree on the two cities to be selected for these additional franchises and then mutually agree which cities are to go into each league. It is understood that the AFL clubs reserve a veto right with respect to the selection of the franchise which will field a team within the present AFL league structure during the interim period.

(*n*) Both new franchises and all changes to AFL club ownership after February 1, 1967 will be made subject to present NFL policies with respect to member club ownership, *i.e.*, no corporate ownership, no public stock ownership, and at least 51% ownership by a single individual.

(*o*) Any change of ownership of an AFL club must have the approval of Commissioner Rozelle.

(*p*) No franchise of either league may be transferred from its present location without approval of the other league.

(*q*) The two leagues will promptly agree on squad limits to become applicable to all clubs in the expanded league for the 1966 and subsequent seasons, it being mutually understood that in the absence of agreement between the two leagues a 40-man squad limit will be acceptable to the present member clubs of the AFL.

(5) The present AFL clubs will pay a total of $— million principal and interest.

(6) All clubs of both leagues will contribute equally to all costs and expenses incurred or resulting, directly or indirectly, from this plan, or any measures taken in implementation thereof, from June 8, 1966 on.

(7) Wherever applicable, the foregoing provisions shall be subject to the terms of the common Constitution and Bylaws to be adopted.

RECAPITULATION OF TERMS AGREED TO BY THE MEMBER CLUBS OF THE NATIONAL FOOTBALL LEAGUE AND THE AMERICAN FOOTBALL LEAGUE HAVING PARTICULAR RELATION TO TWO-TEAM OPERATIONS IN NEW YORK CITY AND THE SAN FRANCISCO-OAKLAND AREA

NEW YORK GIANTS—NEW YORK JETS

(1) In any realignment of the league taking place after 1969, the New York Giants and the New York Jets will not be assigned to the same conference without mutual consent.

(2) Following unification of the league schedule after 1969, neither the New York Giants nor the New York Jets may be required to play any regular season home games on days other than Sunday without their consent, nor will either team be required to play more games on the road than at home.

(3) In the scheduling of regular season games of the New York Giants and the New York Jets after 1969, every effort will be made to avoid direct conflicts between the away game of either team on television and the home game of the other.

(4) Following unification of the two leagues, the New York Giants and the New York Jets, respectively, will be guaranteed that all of their regular season road games will be televised live back to New York City.

SAN FRANCISCO FORTY-NINERS—OAKLAND RAIDERS

(1) In any realignment of the league taking place after 1969, the San Francisco 49'ers and the Oakland Raiders will not be assigned to the same conference, unless the conferences are divided into smaller numerical groupings, *e.g.*, divisions, in which case the San Francisco 49'ers and the Oakland Raiders may be in the same conference but not in the same division, *i.e.*, the smallest numerical grouping.

(2) The San Francisco 49'ers will have the right of first refusal on which California team (Oakland Raiders excepted) is to be included in their own smallest numerical grouping. In the event of a waiver by the San Francisco 49'ers of its right to have the Los Angeles Rams included within its division, then the Oakland Raiders may be assigned to the same division as the Los Angeles Rams.

(3) Following unification of the league schedule after 1969, the Oakland Raiders and the Los Angeles Rams will not play more than one regular season game with each other during any five-year period unless they are in the same smallest numerical grouping for standing purposes.

(4) Following unification of the league schedule after 1969, neither the San Francisco 49'ers nor the Oakland Raiders may be required to play any regular season home games on days other than Sunday without its consent.

(5) Following unification of the league schedule after 1969, the San Francisco 49'ers and the Oakland Raiders will not be required to play at home on the same day without their mutual consent.

(6) Following unification of the league schedule after 1969, no road games of either the San Francisco 49'ers or the Oakland Raiders, respectively, may be televised back to either home city on any day when the other team is playing a game at home, without the consent of the team playing the home game.

(7) Following unification of the league schedule after 1969, neither the San Francisco 49'ers nor the Oakland Raiders will be required to play more games on the road than at home.

(8) Following unification of the league schedule after 1969, the San Francisco 49'ers and the Oakland Raiders, respectively, will be guaranteed that all of their regular season road games will be televised live back to their home cities.

(9) Following unification of the league schedule after 1969, the San Francisco 49'ers and the Oakland Raiders will not be required to play the same opponent at home on successive weekends without the consent of both the San Francisco 49'ers and the Oakland Raiders.

ADDITIONAL UNDERSTANDINGS BETWEEN PARTICULAR MEMBER CLUBS

Following unification of the league schedule after 1969, whenever either the San Francisco 49'ers team or the Oakland Raiders team is playing at home on a day when the other team is not playing at home, the home team may, where such practice is otherwise authorized, utilize pay television or closed circuit television in the blacked out area only without any requirement of consent by the other. At all other times, including specifically days when both teams are playing at home, the use of pay television or closed circuit television by either will require the consent of the other.

The San Francisco 49'ers and the Oakland Raiders will, during 1967 and each year thereafter (unless this arrangement is terminated by mutual agreement), play one preseason game with each other, the site of each such game to be determined by mutual agreement and the proceeds of the game to be divided equally.

Within the restrictions of their existing stadium contracts, for the years 1967 through 1969, the San Francisco 49'ers and the Oakland Raiders, respectively, will have equal rights to play in Kezar Stadium and in Oakland Stadium, respectively, on the same terms and conditions. During all years thereafter, neither team may play in the home stadium of the other without the consent of the other.

Neither the San Francisco 49'ers nor the Oakland Raiders, respectively, may change its team colors nor the official name of its team without the consent of the other.

Neither the San Francisco 49'ers nor the Oakland Raiders will schedule preseason games at home with the same opponent on successive week-ends without the consent of the other.

Following unification of the league schedule after 1969, whenever either the New York Giants team or the New York Jets team is playing at home on a day when the other team is not playing at home, the home team may, where such practice is otherwise authorized, utilize pay television or closed circuit television in the blacked out area only without any requirement of consent by the other. At all other times, including specifically days when both teams are playing at home, the use of pay television or closed circuit television by either will require the consent of the other.

After 1969, and within the restrictions of their stadium contracts, the New York Giants team and the New York Jets team, respectively, will have equal rights to play in Yankee Stadium and Shea Stadium, respectively, on the same terms and conditions.

The **Chairman**. If Mr. Davis would come up.

Mr. Davis, do you care to make any statement before we open it to questions of the members of the committee?

STATEMENT OF AL DAVIS, MANAGING GENERAL PARTNER, LOS ANGELES RAIDERS, ACCOMPANIED BY JOSEPH L. ALIOTO, ATTORNEY, AND JIM OTTO, EX-RAIDER, HALL OF FAME MEMBER

Mr. **Davis**. Well, I thought I would like to speak for a few moments.

The **Chairman**. We would be glad to have you. Go ahead and make a statement, if you want.

Mr. **Davis**. Thank you very much, Senator. This is my first experience before a Senate committee or even a House committee, and I accept the opportunity to be here and I appreciate it very much to talk about my opposition to the bill before the Senate Judiciary Committee which is referred to as the bill presented by Senator DeConcini.

I am very much opposed to it. Over the past 2½ years, I have spent 7 months in the courtroom out in Los Angeles and had a trial by jury, two different trials, the first was a hung jury in which the case of the *Raiders* was won 8 to 2, and the second trial was in Los Angeles and we won unanimously 6 to 0 on a jury verdict and a judge verdict. We won in every court decision, so far, between the National Football League and the Raiders.

No. 2, the DeConcini bill is a bill that has no objective standards or guidelines, that I think are necessary for any bill to make it fair, and it should not be based on whim or caprice of individual owners. To begin with, as far back as 1966, we were told by league attorneys that our rule, 4.3, the rule in question, the movement of franchises, is an illegal rule. We were told that it could not hold muster in the courtrooms of the United States of America.

At that time, and it is documented as evidence, this evidence was in the trials. I suggested objective standards and guidelines, and as late as 1978 when the Los Angeles Coliseum sued the league and in October 1978 we had a meeting in Chicago, and our league attorneys told us, "There is no defense to this lawsuit, there is no defense to this rule." I was the one who said we ought to have objective standards and guidelines so that individual owners cannot vote based on money, friendship, loyalty.

For example, this bill would now give the National Football League, the owners, the opportunity to go back to unanimity, unanimous vote, before somebody could move or eight people could decide that they didn't want somebody to move based on any reason whatsoever. Let me give you an example. In the last trial Pete Rozelle admitted, under oath, that the reason they did not want me to move to Los Angeles was that the Los Angeles franchise was worth a lot more money than the Oakland franchise, and that by my moving to Los Angeles, I would get a valuable piece of property that the other owners thought they should have and they should divvy up amongst themselves.

Under questioning, one of the attorneys for the Los Angeles Coliseum said to Mr. Rozelle, "Do you mean that the owners could vote their pocketbook and say that Davis cannot move to Los Angeles because they want the franchise for themselves just based on money, not equity, not whether he has the right to move, or based on whim or caprice?" And they said, "Yes; that is right."

I do not think it is fair. I do not think it is necessary. I think that the National Football League is 28 individual owners who are individual competitors and I would go a little further and say vicious competitors to be No. 1 on the football field.

We do have common rules. We have common scheduling, but we do not share profits and losses. We do not share them at all. And to make us a single entity is totally unfair because that is what we are not.

I would like to just say to you that my history, my life has been professional football and college football. Ever since I have been young, I have been connected with sports. When I got out of college, I began coaching immediately at a small college. I coached a team that was called the No. 1 service team in the Nation.

I have coached at middle colleges like the Citadel in South Carolina. I have coached at the University of Southern California, and I have been connected with professional football as a head coach and general manager, and I have even been a commissioner of professional football.

In 1963, I went to Oakland, Calif., as the head coach and general manager. I stayed there for 3 years, and in 1966, we were members of a league called the American Football League.

We were in competition with a league called the National Football League. We were in great competition for players. We were in great competition for cities. We were in great competition as to who would dominate the American public as to which league was better.

The owners of the American Football League in 1966 asked me to give up coaching and become the commissioner of the American Football League. I did do that.

And within a period of 4 months, we had a merger with the National Football League which brought all these clubs together. I think that is the quickest expansion and the best expansion we have ever had in this country because the National Football League took nine of the American Football League teams into their league, and we all become one, and it was based on competition, and it was based on something that is inherent in the American way of life.

But to go further, I had the good fortune to go back to Oakland at that time and be the principal owner. I no longer was in coaching, but I was the principal owner.

Just about that time in 1966 Oakland built a new stadium called the Oakland-Alameda County Stadium. It was a complex for basketball and it was a complex for football.

And at that time, the Raiders signed a 5-year lease with the Oakland County Coliseum with five 3-year options, and within the confines of that lease were escape clauses which would allow us to leave.

We could leave if, by nature of the merger between the two leagues it was decided we should leave, we could leave. We could leave for other reasons, but in any event, we stayed.

We stayed the first 5 years. We exercised three of the 3-year options. So we were there in this Oakland-Alameda County Coliseum 14 years.

In the middle seventies I began to ask for certain improvements in the Oakland-Alameda County Coliseum. I thought it was necessary that we get these improvements because the Raiders had done well for the community.

We had the best record in professional football. The coliseum was selling out, but the Raiders did not have certain of the things that I thought were necessary to be competitive in the eighties, the things that other stadiums were getting that were being built.

And so I went to these people and asked for these things. I asked for improvements. For example, we talked about revenue sharing in the National Football League. I believe in revenue sharing, but I believe in sharing it equally.

We have certain teams that have individual contracts based on what we call luxury boxes where they get the money and they keep it. They do not share it with us. The revenue sharing on gate receipts is shared, but it is not shared equally.

There is a disparity of wealth between the top teams in the National Football League and some of the other teams of $4 or $5 million of income.

Now, we share television, and that is the only thing we share equally. Now, the Raiders in Oakland did not get parking or concessions. We did not have luxury boxes that a lot of these stadiums do, and there were many other features that we needed.

We were in a baseball configuration where we had to have actually two different seating arrangements for our fans based on baseball and based on football. For example, this year the league, in anticipation that we would be in Oakland, scheduled us for the first three games of the year on the road.

We had to open in San Francisco. We had to open in Atlanta this Sunday, and next week we open in San Diego on Sunday. And there is no other team in football that had to do this. They do it because of baseball, the problems there.

But in any event, and I could not help it, the Los Angeles Rams who were one of the most prosperous teams in football, if not the most prosperous, in the Los Angeles Coliseum decided to move to Anaheim.

Now, they had large crowds, and as I say, I think they led the league for the 3 years before they left in gate receipts. They had large crowds. They went to Anaheim based on a new stadium situation and a land deal.

I did not begrudge them for leaving to be quite frank. If that is what they wanted to do, it was their business. They did not get league approval when they announced they were moving, and if they wanted to go to Anaheim, fine.

Two things happened when they moved to Anaheim. The people in Los Angeles went to Pete Rozelle and asked for another franchise, an expansion franchise, and he said no, that he would not have another franchise there and that they would have to take their turn down the line if expansion was ever done.

So they went to court. Now, they went to court to sue the National Football League on the rule 4.3, and they also went one other place. They went out in the marketplace to try and get some teams.

And they went to Baltimore, and Baltimore used the Los Angeles Coliseum to get themselves a better deal in Baltimore, and the commissioner interceded and helped them.

Miami got a better deal in Miami by using the Los Angeles Coliseum as a wedge. And Minnesota in 1979, in March, out in Hawaii, the Minnesota Vikings were having trouble getting a new dome stadium in Minnesota. They did not have the vote. So Commissioner Rozelle announced publicly out of Hawaii that no team is locked into a city in perpetuity. Economics are not the only reason that keeps a team in a local, and if Minnesota, in essence, did not get out of there, they were going to let the Minnesota Vikings move to Los Angeles.

Within about a month, it was committed to build a new dome stadium in Minneapolis, some $54 million, and it ended up costing approximately $74.

Now, Los Angeles started to pursue the Raiders because they knew our lease was up at the end of 1979. And in November 1979, Pete Rozelle came to the bay area for a press club. He was a featured speaker.

And I talked to him, and I said to him, "I want you to do one favor for me. Give me the same treatment you gave Minnesota," because I was having trouble with the people in bay area in getting any commitment from them on the things that I thought were necessary to be competitive in the eighties, what our stadium needed.

We were one of the smallest stadiums in the league, the Oakland-Alameda County Coliseum. They still are. We had no luxury boxes. We needed moveable bleachers in the stadium which would give a configuration so we could play during the baseball season and play well.

And he would not do it for me. Even after the press club, all newspaper articles, and this was documented at the trial and documented in court, all newspaper articles said about Davis moving or the Raiders moving, everything, Rozelle said everything but no.

Now, other owners came into my community and said Davis cannot get the vote. He cannot move. The vote would be 27 to 1 against Davis. He cannot move. And so it became almost impossible to negotiate.

I want to go back one moment to October of 1978. The Los Angeles Coliseum had sued the league that their rule was illegal. We had a meeting in October of 1978 to go over this lawsuit.

I will never forget it, but our chief counsel, Mr. Hamilton Carruthers from Washington, told us there is no defense to this lawsuit. We have got to change the rule. We have got to change the rule to make it fairer, that you do not need unanimous vote to move.

We have got to move that vote procedure down in some vein where people will think that one or two people or even eight cannot block the move of an owner who legitimately can move.

To change that rule, they needed the unanimous consent of all the members, and for 2 days there were three or four of us who refused to give the consent, and late on the second day there was only one person who refused to allow them to change that rule, and that was the Raiders, and that was myself.

And the reason was because I was looking for objective standards. I was looking for guidelines, something that could be fair, that was functional, not based on whim or caprice.

After 2 days of fighting and arguing over the issue, I acquiesced and said I would abstain for the right to move without approval someday down the road. Now, we get into a confrontation and we got into a confrontation in court as to what I said and what they heard.

There was not one owner who did not say that they remember me saying I reserve my rights, and even one or two said I heard him say I reserve my rights about moving. But in any event, I did say it. There is confrontation about that thing.

Now, we came further. In 1979, I was negotiating with Oakland. I did not seem to be getting anywhere. I had the feeling that they thought I was locked in, that I was captive, I was hostage.

And at the very beginning of January 1980, I met very hurriedly and in long length with the Los Angeles Coliseum and we were putting together a deal that would bring the Raiders to Los Angeles.

It was at that time I met with Commissioner Rozelle. I told him what I was thinking. He wrote me threatening letters that if I were to do this that there would be disciplinary action and things like that taken against me.

In any event, the Los Angeles Coliseum, on 2 days before the Super Bowl, filed for what we call a preliminary injunction. A day after they filed for the preliminary injunction Mayor Wilson of Oakland and Cornell Maier, the chief gentleman of Kaiser Corp. in Oakland, flew down to see me in Los Angeles on a Saturday, the day before the Super Bowl.

And they presented a situation to me that I said was the first time anyone entertained the problems that we have and that we would need in Oakland, and so I told him what else I needed to the document that might make it amenable to me.

I met with them 3 days later in Oakland, and I thought we were very close to a deal between the Raiders and the community of Oakland and staying in Oakland. I told them there were one or two points that had to be thrashed out yet, and they thought they could get those points down.

I then flew to Dallas, Tex.—this is documented—to look over their stadium relative to the way they built boxes, and I told Tex Schramm, the president of the Cowboys, and he admitted this under oath, that I would stay in Oakland if the commitment was fulfilled by the mayor and Cornell Maier of Kaiser that they had presented to me and that we had agreed to.

When I came back to Oakland, my people had negotiated, the lawyers had met. Everything was moving ahead, and on a Friday, Mayor Wilson and Cornell Maier came in to see me and told me that their deal had been jerked out from underneath them.

They had been repudiated, and they no longer could continue on, that there would be a new proposal on the table, that certain people who supported their position felt that they no longer could support their position.

I was adamant that we keep the Wilson-Maier proposal on the table. They could no longer do it. Now, the mayor and Cornell Maier issued a press release to this extent, and it has been documented again. The mayor and the newspaper came out and said he was very upset with the old guard at the coliseum because they misled him and misled his authority.

I then went on and continued negotiations with Los Angeles and signed an agreement March 1, 1980, that has been contested ever since. We have had two trials. I can only tell you that I think I have been tremendously reasonable.

We have had at least 15 settlement conferences. My attorney attended most of them. I have been active in three settlement conferences. As late as 2 months ago we had a settlement conference.

In the middle of the trail—in the middle of the trial— one of the owners in the National Football League came to the trial, watched the trial for 2 days, called me, asked me to come in and talk to him and asked if there could be a settlement.

And I told him under the terms that I thought there could be a settlement,that the judge who had handled the case thought there could be a settlement just before the trial started.

He could not understand why there could not be a settlement, and he went to Rozelle and asked Rozelle about the settlement terms, and in essence, Rozelle told him two things. We do not have to win the trial. All we need is a hung jury. We need one vote. But they did not get the one vote.

And he told him the second thing is we can then go to Congress and with their massive power and their massive influence get that thing through Congress.

And so every time we have gotten close to settlement, every time we have talked about it and every time I have been led down a road for about a week or two, it always comes back to me that at first it was the hung jury and second it was Congress.

I guess there is a lot else I have to say. I told you that my life has been football. I love the National Football League. I have heard many accusations made, many statements made. I would love to answer your questions. I hope there are many, and if I have forgotten something, I hope I can come back to it for a few minutes in the next moments.

The CHAIRMAN. Thank you, Mr. Davis. We do have a few questions we wish to propound, and some of us will play the devil's advocate in some of these thinqs to bring out some facts.

Mr. Davis, it seems to me that much of the criticism you have received follows along these lines, that you have hurt the consumers and taxpayers of Oakland and completely ignored the public interest and that when you joined the National Football League, you agreed to abide by league rules which some say you now repudiate. How do you answer these questions?

Mr. DAVIS. Well, No. 1, Senator, I spent 19 years of my life in the community of Oakland, and I think I have contributed a great deal, and I think the testimony in the first trial of Mayor Wilson and Bob Nayhass who was president of the coliseum would attest to that unequivocably.

In the second trial, it was tempered because the idea was to paint me as the bad guy. But the Oakland Coliseum can pay off its bond indebtedness without the Raiders. That, too, was admitted under oath. They have professional baseball. They have professional basketball. They have a new football team in the U.S. Football League who is just waiting for us to leave our practice facilities so they can take it over.

They turned over last year $2½ million to the community of Oakland. All the bonds were bought east of the Mississippi. The community of Oakland never bought the bonds. They were bought east of the Mississippi, but they had the money to pay it off.

I have made every contribution. I do not know who is saying this other than to cause problems.

No. 2, what was the second question? Relative to the National Football League, sir?

The CHAIRMAN. What about the criticism of agreeing to abide by the rules?

Mr. DAVIS. Well, I do abide by the rules, Senator, especially if they are legal rules, but if you remember this, when we won the trial in Los Angeles, the Raiders, at the beginning, did not contest the rule 4.3.

What I contested was that even if the rule was legal, they acted in bad faith and unfair dealings, and we won that unanimously, that they did not give me proper consideration, that they did act in bad faith and unfair dealing.

They came into my community, said I could not get the vote before I even asked for the vote. They tried to take my team away and put it in receivership. They came up with a theory of eminent domain that is so foreign to this country to confiscate a professional football team.

They put every type of harassment in front of me, and I have abided by the rules all the way, and I think the court bears that out. I do not know any other way to prove it other than give you self-serving statements.

The CHAIRMAN. Mr. Davis, earlier this year, the Judiciary Committee approved another antitrust bill which gives a trial judge the power to decide whether that bill should be applied in pending cases.

Would you support a similar provision in either of these two professional sports bills?

Mr. DAVIS. Senator, as I told you before, I really do not think these sports bills are necessary for the good of the National Football League and the good of the American public.

I think that these sports bills take away the right of cities to protect themselves. They give us a hammer and a wedge to do whatever we want.

Now, if you are asking me do I believe a court of law can make a decision on equity. Certainly I do. I have gone through it for 7 months and have won on every judgment and every decision. Certainly I do.

The CHAIRMAN. Mr. Rozelle stated in his testimony before the committee that Los Angeles was denied an expansion team in 1978 because it was too soon after the 1976 expansion.

In paragraph 5 of your statement, you suggest that with the NFL as a participant, team owners used an empty Los Angeles Coliseum and threats to move there as a means to force the city officials of their existing home locations to acquiesce to certain demands.

Are you implying that the NFL purposely kept the Los Angeles Coliseum open so that it could be used in that way?

Mr. DAVIS. I am implying that that was what was done. I am also implying that no team will ever be put in Los Angeles to protect the exclusive territories as long as the league can make the decision by themselves.

Yes, I am implying that because that is what was done. It was done in Baltimore. It was done in Miami, and it was done in Minnesota.

The CHAIRMAN. Mr. Davis, to follow up my last question, would you support legislation designed to protect communities from undue pressure to build new facilities?

Mr. DAVIS. Certainly I would, yes, sir, I would support the proper bill along those lines, yes, sir.

The CHAIRMAN. Mr. Rozelle stated on August 16, 1982, that he believed that the city of Oakland, should it acquire the Raiders through eminent domain, intended only to hold it temporarily and then sell it to an owner who would intend to keep the club in Oakland.

You state that that was a secret arrangement between Oakland and the NFL, dealing with the ownership of the team, if Oakland succeeded in its eminent domain proceedings. Would you elaborate on what this arrangement involved?

Mr. DAVIS. Well, first of all, it's totally illegal for a community to own a professional football team relative to our own constitution and bylaws. But they had tried everything up to that point including receivership and had failed in the courts in Oakland.

So now they were going one step further. Anything that they could get their hands on to get me away from the Oakland football team and get their people in so that they could keep the team in Oakland even though we had due process going in the courts was what was going on.

And Pete Rozelle admitted, under oath, that the attorneys for the National Football League and the attorneys for the city of Oakland had made a deal whereby the owners of the National Football League could pick the new owner if the city of Oakland could condemn that franchise.

The CHAIRMAN. Mr. Davis, in paragraph 12 of your prepared statement, you state that you have always felt that team transfers should be based on objective guidelines rather than subjective votes by competitors.

Given your position, do you favor the approach taken by Senator Specter in S. 2821 which sets up guidelines that the NFL must follow in ruling in team movements? If so, what guidelines should be included and who would be best to administer them?

Mr. DAVIS. Well, No. 1, I do believe in objective standards and guidelines because then I think it brings us into conformity with the antitrust laws of the United States.

I have a list of guidelines and standards that I think would be excellent, and if we could not agree on them, we would go to impartial arbitration, and I think whether a team could move or not could be done in approximately 3 days.

This presentation was made in court. I would be happy to submit it to the Senators, but there is no question that we need objective standards and guidelines, and we need impartial arbitration to manifest what should or should not be done to determine whether a team moves.

The CHAIRMAN. Mr. Davis, in 1972, former U.S. Senator Cook of Kentucky introduced a bill to establish a sports commission to administer sports. What would be your opinion on a commission of that kind?

Mr. DAVIS. I really believe that we are intelligent enough, smart enough and reasonable enough down deep, if we could do away with the petty whim and caprice of some owners, that we could administer our own business and our own occupations and do an outstanding job.

I am greatly concerned with what is going on with the players and the owners right now, but I think that there is still time for us to get together without a sports commission and do an outstanding job for the public of the United States.

The CHAIRMAN. Well, since you are not getting together, I just wondered how much longer you think you will take to get together.

Mr. DAVIS. Well, I say this. You know, in the National Football League, in the archives we have a gag rule, I guess, that we are not supposed to talk about this. We could be fined up to $100,000, but I think I can get away with it here.

I believe that the players are 90 percent of this game, if not all of it. I think the owners own the game, and I think that we should lead and be intelligent enough to get the thing done, and I think I guess you need crisis in life before everything is done.

I think we will get it done, but I think the players can be led. I think they believe in certain owners, and I think that maybe what we do need is a crisis to bring it to a head. But I am hoping it could be done very soon.

The CHAIRMAN. Mr. Rozelle speculated during his testimony before the committee that one of your motivations for moving to Los Angeles was the possibility of pay or cable television and the opportunity for enhanced revenues over what you could get in Oakland.

What would you care to respond to that statement?

Mr. DAVIS. That it is untrue. That is his speculation, and he knows it is untrue, because he made that statement after I testified in court that I was for sharing. I believe in the concept of sharing television no matter where it came from, and he knew I said that.

He knew that every time Judge Pregerson and I and he were together the judge asked me that because Rozelle would always bring that up as a big scar, and he knows how I feel.

I believe in revenue sharing. In fact, I would like to share all revenue equally, the box revenue, the concessions and the parking revenue equally, and then let us go out on the field and compete equally on the football field and not worry about the financial money that comes into each club.

I have always believed in that. I would just like to compete with them on the football field, but not let them have, as they have now, a $4 and $5 million headstart on profits over the Raiders in Oakland where they can eventually show up on the football field as a much better football team.

That is the thing I do not want to happen to the Raiders. Now, in Minnesota, there is a fellow by the name of Calvin Griffith in baseball who has what we call an apologetic baseball team, because he cannot compete.

There is a guy who had three world championships in the bay area in Oakland, Finley. He lost that whole team. He had to sell out because he could not compete economically with the other owners in baseball.

And I just do not want it to happen to me, and I had to take steps to stop it from happening to me. Let me make one other point to you, Senator.

When the Rams moved, they moved to Anaheim. Everyone said, "Well, they only moved 45 miles. They moved within their territory." When there was an injunction to keep me in Oakland until we had the trial, I made the statement that I might move from the Oakland Coliseum 3 miles up the road to Berkeley, 3 miles, and the headlines the next day, huh-huh, he needs a vote, and he cannot get the vote to move even to Berkeley. There is a difference.

And I just say to you that fairness and equity just was not true in this case, and the jury upheld that.

The CHAIRMAN. Mr. Davis, on the subject of revenue sharing, it was suggested during the trial in Los Angeles that the NFL revenue sharing would be the next thing challenged by the owners of the Raiders.

What is your position on revenue sharing and did you suggest during the trial that you would challenge that policy?

Mr. DAVIS. No, sir, I never did. In fact, as I said to you, just the opposite. I said I would consent in writing to a commitment that I would never challenge revenue sharing.

In fact, I would like to share revenue equally in all areas. I would like to share revenue in all areas, parking, concessions, luxury boxes, gate attendance, be very happy to, Senator.

The CHAIRMAN. Mr. Davis, you state that the Oakland authorities refused to negotiate a realistic settlement arrangement with the Raiders. The allegation has been made that you demanded certain improvements to the stadium that would have caused Oakland to take on a 20- to 25-year obligation while you were only willing to sign a 7-year lease.

If that is true, what would you have considered to be a realistic arrangement?

Mr. DAVIS. A realistic arrangement, if you recall, Senator, I pointed out to you they spent $26 million in 1966, and only asked us to sign a 5-year lease. Now, the improvements that we thought were necessary at that time in 1980 cost approximately about $8 million, and I was willing to sign a 7-year lease.

Now, when we had further settlement discussions about 2 months ago, we found out that the figure cost was about $17 million, because there were time factors, the cost of construction and such like that.

At that time, I consented in the settlement talks to sign a 10-year lease.

The CHAIRMAN. Senator Laxalt, do you have some questions?

Senator **Laxalt**. Thank you very much, Mr. Chairman.

I must say, Mr. Davis, considering this is your maiden appearance before the Congress you seem right at home.

Mr. **Davis**. Well, we won yesterday, Senator, so we feel a lot better. [Laughter.]

Senator **Laxalt**. It always helps, doesn't it?

Mr. **Davis**. It sure does.

Senator **Laxalt**. I have problems with this whole area of legislation getting beyond the immediate difficulties that have been experienced by you and some of the league members and that is whether or not the league should be here at all with this legislation.

Sometimes I think that we sit here as a Judiciary Committee as some kind of supercourt, and that is what we have been this year. We had, in the contributions bill, 995, many of the major corporations of this country and their lawyers sitting here day after day asking us as a legislative policy group to settle their dispute.

And now after we resolved that after a great deal of difficulty, we are asked now to resolve what appears to be a, well, having been in the practice, sort of a contested divorce case. You cannot settle it in the family. The courts apparently cannot do the job so you are asking the Judiciary Committee here to settle this.

Now, that bothers me, and I think it should bother the owners, too, all of them, including yourself for this one point, because I hope that you all realize by coming here for relief that there is another side to that coin, because essentially what you are doing is turning over the settlement of a lot of your internal affairs to a political group, and while right now you can settle your problem internally and you have apparently for the last 20 years without too much difficulty, and if you have not gone there, you have gone to the courts and that has cleaned it.

The bottom line in this whole situation is that if we move forward with this piece of legislation, and I am still undecided on it, if we move forward on it, as far as the league is concerned, you have turned over effective control of the league's internal affairs to nine politicians sitting on this Judiciary Committee and essentially the same on the other side.

And I will tell you, if I were an owner or involved in that league, I would take a second look lest you are going to politicize a group that has operated and functioned generally with this one big exception quite effectively.

Now, having said that, at the outset of your statement, you made a declaration to the point, and I think this is important for the record, that your problem with the legislation is the absence of standards and guidelines, and you have indicated in response to the chairman's question that you previously indicated in this whole field, if you had some objective standards and guidelines, you would go.

Are you telling this committee that if these pieces of legislation were amended to include standards and guidelines, that that would be acceptable to Al Davis at least as a matter of principle? Are you telling us that? Or do you want to be here at all?

Mr. **Davis**. I really do not want to be here at all. In fact, my attorney actually forced me to come here.

Senator **Laxalt**. No; I do not mean your being physically present. [Laughter.] I mean jurisdictionally. Even Al Davis could not resist the subpena.

Mr. **Davis**. Let me make this point to you. In 1978, Pete Rozelle in an affidavit listed the standards and guidelines that govern franchise moves in an affidavit in this lawsuit.

We took those standards and placed them on a sheet and put them up in the courtroom. The Raiders met everyone of those standards. I would still be willing to live by standards.

I always have. I think if we had guidelines, I do not have to worry about some fellow down the road who wants the Los Angeles franchise for himself so he can get the money so he does not allow me to move.

I am willing to go by standards and guidelines, but I also make the point, Senator, that I spent 2½ years on this, and it is not joyous, I am sure, for the league members or myself.

I have won in court. I won on the good faith and fair dealing and I won on the rule being illegal, and I was not worried about the rule. I was worried about the good faith and the fair dealing.

But I am willing to do anything that is reasonable. I do not want to be here, and I do not think we should be here. I am willing to do anything that is reasonable.

Senator **Laxalt**. How do you think this could be cleaned up? You have now a hearing, and you have gotten out of the courts. What are the reasonable prospects of some kind of settlement here so that this can be cleaned up? Do you foresee any here considering the internal dynamics here of a Rozelle-Davis continuing confrontation?

Mr. **Davis**. I do not want a continuing confrontation with the commissioner. In fact, I am willing to let him win in some way if that is what he needs, a victory. I am willing to let him win.

I honestly believe if we took——

Senator **Laxalt**. Can you conceive of a set of circumstances that you would go back to Oakland?

Mr. **Davis**. I would say this. If we took this group, this Senate Judiciary Committee, and put the commissioner in here and put myself in here, now I have been judged by two other tribunals in court. First it was 10 jurors and then it was 6 women. [Laughter.] And they were pretty good.

As I said, the first time we won 8 to 2. I am willing to come before the nine Senate Judiciary Committee members and I realize some of them are opposed to my position because obviously Mr. DeConcini has his bill which makes it retroactive.

But I would be willing to sit before the nine Senators, present my case, let the commissioner present his case, talk about anything that is reasonable and I would be willing to acquiesce to them.

Senator **Laxalt**. Tell me this. In the discussions that we had in response, again, to the chairman's questions when you were talking about the consumer's interest, the public's interest, and I guess that is our principal responsibility here, because there is a strong public interest in professional football, no question about it.

Your responses pretty much indicated the problems you had with the Oakland authorities, and somewhere along the line, the consumers were left out of this equation.

Now, in terms of the consumer, again, to an Al Davis, have they been served well by your move to Los Angeles as a result of contractual difficulties with the city of Oakland?

Mr. DAVIS. No; I would say that the community of Oakland, the people of Oakland have been hurt. I am well aware of that. They had a love affair with the Raiders, and quite frankly, we had a love affair with them.

We had great rapport. As I said, we had the best record in professional football, and though our stadium was small, the fans did turn out. But I also watched the Rams move from the Los Angeles Coliseum where they had a love affair to Anaheim, and they were the most supported team in the league.

And I did not know what I could do but I think the community of Los Angeles has responded to the Raiders, too, when we came down there. I realize there is an inequity and an injustice there.

Senator LAXALT. And this brings us to the nub of the problem, at least as far as this Senator is concerned. I have had problems with the retroactive aspects of this thing for obvious reasons.

I just do not think it is right in a situation like this where the ballgame has been played to call for a fifth quarter, and that is what you are talking about when you apply a bill retroactively which is the case here, and I have problems with that.

But beyond that, as far as essential need of the legislation is concerned, it seems to me that what we have to consider here, as a national legislative body, are the interest of millions of consumers.

And that brings me to the point of stability. Are we left in the present structure here, thinking in terms of the consumers, that we have to go to some form of protective legislation, perhaps in this form, without retroactivity as a matter of stability to protect those consumers? Or can this be done effectively in-house?

Mr. DAVIS. I would think it could be done effectively in-house, but I do not think this bill protects the consumers in any way because all it does is let the league decide that we want to move somebody and there is nobody that can even challenge it any more, because this bill says leave it to the owners.

Senator, I think——

Senator LAXALT. That is an extremely strong point, I think, because now the principal factor, as I understand, at least historically, is contractual, is it not?

Mr. DAVIS. That is right.

Senator LAXALT. Plus you have a league overlay here but it is contractual. And if I understand the thrust of this legislation now, that would all be moved to really the whim of the league if they decided on a cold steel basis the hell with the fans in Oakland, the fans in Oakland be damned.

Mr. Davis. That is right.

Senator LAXALT. You just simply take that and move it to some other place. Is that your understanding of the intent of this legislation?

Mr. DAVIS. Very much so. This legislation gives the league a complete exemption to anything they want to do about the franchise movement. They can go into Oakland or they can go into Los Angeles or go to Anaheim and say you do this for us, for this owner because we like him or we are going to move the team out of here.

But they can go into Oakland and say, Do not worry about anything because he cannot move and we are keeping him here under these conditions.

Senator LAXALT. Well, tell me this then. If this bill does not do it, and I quite agree with you that I do not think it does, and if you cannot do this within the professional football family, and we are then driven in the public interest to build some kind of protection for the Oaklands of this world, and I am talking about the fans now——

Mr. DAVIS. Yes, sir.

Senator LAXALT [continuing]. Would that be acceptable to an Al Davis, if we are driven to that here? Do you think there is a need for it?

Mr. DAVIS. It is more acceptable to me as long as it is based on equity, fairness and standards and guidelines than it is the way we do it now, because we do not do it now on fairness or equity.

It would be more acceptable to me, although I still go back and say that we can do it ourselves. I think there is another factor, the players. I think we have to consider them, too.

You know, when we move a whole organization, we move families and we move everybody across the country, but I would hope, I would hope that we could do it ourselves. I would hope that there was some way to get this out of this forum, and I had hoped for many times to get it out of the forum of the court, but I never could get it out of the forum because there was no interest on the part of the other side to get it out of the forum.

And when I say "the other side" I do not mean the owners in totality. I mean a small clique of owners with the commissioner who, for some reason or other, feel that they have got to be successful on this no matter what it costs or what it takes.

Senator LAXALT. Mr. Chairman, those are all the questions. I thank the witness. He has been very helpful. I think he has provided a good deal of valuable information for the record.

The CHAIRMAN. Thank you very much, Senator. That is the 5-minute bell. We have all got to go and take a vote. If Senator Specter comes back, he can continue.

[Whereupon, a short recess was taken.]

Senator SPECTER. Our practice here is to vote in sequence, and I had gone to vote and have just returned, and Senator Thurmond has departed to vote, as you know, and he asked me to continue the session, because we have a very long list of witnesses.

I heard the opening part of your testimony, as I just said, and I did not hear the latter part. I did hear you say that you had looked for standards.

Mr. DAVIS. Yes, sir.

Senator SPECTER. There are two bills which have been introduced so far. Senator DeConcini's bill which essentially stated would give control to the league to stop moves and legislation which I have introduced which would prevent a move in the event that a team was making money and did not have stadium problems. It was not in a financially distressed situation. Or more accurately stated, the current antitrust laws, as you know, have been interpreted in the Federal court to say that it is an unreasonable restraint of trade to require, as the NFL does, the restrictions against moving.

And the legislation which Senator DeConcini has introduced and the legislation which I have introduced would create an exception to the antitrust laws in that limited situation.

But Senator DeConcini's bill also has a reference relating to a profit sharing which may permit a pay TV in 1987, may or may not, that is one of the concerns which some of us have, but the legislation which I have introduced is much narrower just on the issue opposed by the Raiders move and I have said that while initially my instinct is to have it apply to the Raiders move, I have not ruled out prospective application only which may mean it would not apply to the Raiders move but would look only to the future.

And my question for you is, have you had an opportunity or your counsel to review the legislation which I have introduced, the Senate bill 2821?

Mr. DAVIS. Senator Specter, I would like to speak on that and then I would like to acquiesce to Mr. Alioto, but I have looked at your bill, and I would say quite frankly that I think you, with no disrespect, are headed in the right direction of objective standards and guidelines.

But I want to make this point to you that if we have revenue sharing, we should share all revenue equally because the particular problem that confronts me, even if we make a couple hundred thousand dollars, if someone else down the road is making $4 or $5 million more than I am because their gate is larger, because they have luxury boxes, because they have parking and concessions, then it is going to show up competitively on the football field.

I am interested in sharing all revenue from our sources, not the side deals that some teams have under different corporations where they take in the money and it never shows in their manifest.

If we share all that money equally, then I have no problem being anywhere. I can play anywhere because what I really want to do is compete on the football field.

As I pointed out while you were out, in Minnesota, the baseball team cannot compete. They have what we call an apologetic team. The team that was in Oakland won three world championships, Mr. Finley's team.

They could not compete financially. They lost most of their players and eventually he had to sell out. The Rams in Anaheim made $4 to $5 million more that I would make in Oakland.

I eventually will not be able to compete under those types of situations.

No. 2, when we went to court, I basically went—my attorneys recommended the antitrust rule, that 4.3 was illegal, that they had no standards, no guidelines. It was based on whim or caprice of the owners.

It was based on the opportunity of owners to stop me from going to Los Angeles because they would make more money if they ever expanded to Los Angeles and they wanted to keep that territory virgin for themselves.

They were allowed to do that, and Rozelle reiterated that that would be fine. That is the way the rule is written. I have always said standards and guidelines, but what was most important to me was that they did not even use the rule fairly when they had the rule.

They came into my community and told my community I could not get the vote. They did a lot of things to me that this jury decided was not totally fair, but I have read your bill. It is in the right direction. I think there are other factors that have to be considered.

But anything that is reasonable and fair that has total revenue sharing I would be for.

Senator SPECTER. Well, Mr. Davis, there is no way that I know of that the Congress can mandate that all owners share all revenues equally. That is an item which really goes to your agreement.

Things are never really totally fair from the time we are born, some with a silver spoon, some in the depths of poverty. Your line of competition is not totally dissimilar from the competition in the U.S. Senate, and it will not surprise you to know that some U.S. Senators have much more by way of financial resources to wage campaigns than other U.S. Senators.

And when I was in a Senate primary once in 1976, I started when the law said that each candidate in the primary could spend $35,000 which was how much money I had saved at that point, and 3 months into the campaign, the U.S. Supreme Court said that part was unconstitutional and people could spend whatever they chose.

There is no way you can legislate financial equality. So there is no way we can say that each team should be the beneficiary of total revenue sharing.

Mr. DAVIS. Yes, sir, but it did not stop you from trying to get more, and that is all I want to be able to do, to be able to go out and compete and try and get more and do what is right for my organization and my team, taking into consideration the community I am leaving.

I tried to negotiate in good faith in the community that I was leaving, and I am willing to go in any direction that anybody else is willing to go, but I just feel that we do need standards, certainly we do.

Senator SPECTER. Well, the legislation which I proposed does have standards.

Mr. DAVIS. Yes, sir, I saw them.

Senator SPECTER. The concern which I have—you have a controversy with the National Football League, and you are battling them. There is a third party whose interests are of concern to me and that is the interest of the fans.

And my thinking is that the fans have really a form of a propriety interest, and I say that as a long-term sports fan, very much concerned about the move of the Dodgers to Los Angeles years ago, a baseball fan since I was a child 8 years old. And I have a concern as a U.S. Senator that Pennsylvania has two very important football teams, the Steelers and the Eagles, which mean a lot by way of the economy to Pittsburgh and Philadelphia.

And I can see a situation like the St. Louis Browns where a team has to move where they are not supported, but I am concerned about a move where somebody is making money.

Now, I can understand your point on the $4 or $5 million differential which will enable the team that has $5 million more to hire better talent or to go out and bid more, and I would like to take that up in just a minute.

But even assuming that that $5 million difference in revenues is going to put some teams in a better competitive advantage which they might have if they have an owner who has a $100 million personal fortune to spend. All the owners are not equal. Some owners have more money than others.

But it is the fans' interest, and if you have been in a distressed situation in Oakland, I can see the justice in saying, "Mr. Davis, go ahead." We are not going to say that you have to go into bankruptcy there.

But the concern I have is that when you were making money, although not as much as you might make somewhere else, why should you be permitted to move where the fans of Oakland have such a longstanding love affair with the Raiders?

Mr. DAVIS. Well, to answer that question is that I foresaw in the future where I would not be making money, and I was greatly concerned that the disparity was growing between teams and that I was going down.

Now, we happened to be winning. We were fortunate enough to win, and we have always paid our players pretty well, and maybe that is a fault. I was told at the last trial by one owner that I should not pay my players as much. I do not manage my money well.

I just felt that there were certain things I needed in Oakland, not only for me as an owner, but for my players, for my entire organization, and I tried to negotiate for those things, and I felt it was incumbent on me to do something for the entire organization.

We do pay staff. We do pay players. And then No. 2, I did not see anyone speak out when the Rams got up out of Los Angeles, out of the coliseum and they had perhaps the most prosperous team in the National Football League and moved that team 45 miles down the road to Anaheim, and no one said a word. That was fine.

But the minute the Raiders even hinted that they might move, everyone was in that community doing things that were unnecessary, and we could have struck an agreement.

I will say this to you, Senator, as late as 2 months ago or as early as 2 months ago, there was a possibility of settlement in the middle of the trial. There was a possibility of settlement just before the trial. There was a possibility of settlement.

And that settlement always involved a team remaining in Oakland, but no, two things always stood out. One, they only needed one vote on a jury to keep the status quo, to get a hung jury, and No. 2, that they could come into this forum with their massive power and money, I have to say it, and perhaps get what they want and defeat what happened in the courtroom, if they should lose in court.

And we never could get anything done. I took into consideration the people of Oakland. The only reason I discussed settlement was the community of Oakland, and that was on the table up until 2 months ago when it was dropped again.

Senator SPECTER. Mr. Davis, is it realistic for you to say that you ran the risk of losing money if you stayed in Oakland?

Mr. DAVIS. I think I would have, yes, sir, we had not gotten this new TV contract.

Senator SPECTER. But given the new TV contract and the reality of television proceeds and the tremendous popularity of professional football, how can you say that by staying in Oakland you would lose money?

Mr. DAVIS. No, I said that it were not for the new TV contract, I would have lost—I did lose money. I would have lost money in Oakland. But I make the point to you that with the new TV contract, if I had stayed in Oakland, I would make money, depending on how we end up with the players right now. But certainly we are not going to end up in a position that is untenable.

I would make money, but I also tell you, and I say it to you seriously, Senator, that professional football is vicious competition to be No. 1. We are 28 independent competitors, and to be No. 1 on the football field—I have watched it happen in baseball, I have watched it happen in basketball, and I do not want it to happen to me.

I even watch it with some clubs in our league in football. They have bank loans. They own money here. I am not one of those guys who has that $100 million that you talked about and things like that.

I want to be able to compete. I think I have a right to compete. I admit it. I want to have the best team in professional football, and to do it, I have to be in a competitive situation.

Senator SPECTER. Well, I respect your statement on your desire to compete and your right to compete, but when it comes into conflict with the interests of the fans, that is where the question arises in my mind.

Mr. DAVIS. Yes, sir.

Senator SPECTER. If you say that you are going to lose money in Oakland, that is one thing, but if you are not going to lose money in Oakland, then it may be—and we are just exploring this——

Mr. DAVIS. Certainly.

Senator SPECTER [continuing]. It may be that your right to compete would have to have some limitation contrasted with the right of the Oakland fans to retain the Raiders.

Mr. DAVIS. Well, if that is the law, I will have to abide by it, but I did not think that was the way of life that I grew up in and the way of life as it was expressed to me.

I thought that if I built my—now, let me say this to you, Senator. I came to Oakland in 1963, and Oakland was the lowest of lowest. There was nothing lower.

Now, if you want to say the fans built the team and that they grew with us, that is fine, but we also built that team. We built that organization and my life is in that organization, day and night, and that football team is in, the players.

I say to you here. I have one player who is in the Hall of Fame. He is one of our truly great players, Jim Otto, and he was in Oakland before I got there. I came from another professional football team to take over in Oakland.

And I realize that we have an obligation to the fans. I realize that we do have this, but I also have an obligation to everything else about life and everything else about America, and I saw others do it.

And I also know that I admit that I want to be able to compete, and there is a—what would you call it, a paradox or something that fights each other when you take into consideration the fans.

We went to Los Angeles, and within a period of 3 weeks, we sold 50,000 tickets, in the period of 3 weeks. So there must have been a vacuum there when the team left and went to Anaheim. There must have been a vacuum there.

Senator SPECTER. Can you think of any cities where you would have gone where you would not have sold 50,000 tickets?

Mr. DAVIS. Yes, there are many that do not in the National Football League.

Senator SPECTER. I am sure you could think of many where you could have gone and sold 50,000 tickets.

Mr. DAVIS. Yes, certainly. Let me say this to you, too. We, in San Francisco and Oakland, have been the only team in America, the only city in America that has two teams that fought the competition from 1963 of two teams in one area other than New York which is a very big area.

We paid $8 million, the American Football League paid $8 million to the San Francisco 49ers to allow the Raiders to play in the bay area, and we had to meet all those things, and we met them all.

And I say to you that you have a legitimate argument on your question to me. It is a legitimate argument. I think our answer is overriding, and I think quite frankly had you been there at the time the way you speak, had there been reason, had there been some emotion not based on whim or caprice or bad faith and unfair dealing, this thing could have been settled.

I think it could have been settled 2 months ago, and I think it could have been settled during the trial, and I did make this presentation while you were out.

I would take the nine Senators on the Judiciary Committee, bring in Commissioner Rozelle, sit him here and sit me here, and although I have been before two tribunals already, and I think we have won decisively in each, I would be willing to acquiesce to whatever decision you come up with.

Senator SPECTER. That is a pretty good offer. We may take you up on that, Mr. Davis.

You mentioned you were going to make money so long as there is no strike, and all of this controversy may be meaningless if there is a strike, and although it is not within the direct purview of the question, I think it is a matter of substantial interest and really public interest, do you have any suggestion as to how the Congress might be helpful in avoiding a strike?

Mr. DAVIS. Let me make this point to you. The president of the Players Association is Gene Upshaw who is a captain of the Oakland Raiders. He played for us for 15 years.

Senator SPECTER. Captain of whom?

Mr. Davis. The Oakland Raiders and the Los Angeles Raiders. [Laughter.] I was just checking you, Senator. [Laughter.]

Senator Specter. That is funny. I thought I was checking you. [Laughter.]

Mr. Davis. I say this to you that I think the players are 90 percent of this game. When they say they are the game, I think we have to realize that they are young people who say they are the game, but I think they are 90 percent of the game.

We own the game. We can lead it. I think we could get it done. I do not think it is necessary to have a strike. I admit that in most times everytime we have dealt with the players, and I do not say we are right because we have this gag rule, I told the other Senators, we have this gag rule in the National Football League, if I were to say something that was not in concert with our management council, they could fine me $100,000 but I did say I would get away with it here.

I do not think we are particularly right. I think we can lead the players. We always have. There might be a crisis for a short period of time, but I think it can be worked out by reasonable people.

And I just really believe it can be worked out.

Senator Specter. Is there anything the Congress can do to help?

Mr. Davis. Yes. The Congress could do to help. I do not think you realize what you are dealing with when you are dealing with the National Football League. For example, there are six people in power to negotiate for the National Football League.

Whatever I would say here might be taken as affrontry but we have a commissioner who refuses to get involved in it, at least at this stage. Why? I do not know. He represents both the players and the owners.

We have a group of six owners who—I am not sure if they are totally qualified to represent all the aspects. Sure, anybody can help who is reasonable. Yes, again, I could say we could come before the Judiciary Committee here, nine people. I think you are all objective. You are interested in the welfare of professional football. You are interested in the players, and I think we have to take them into consideration, too, even on a move.

I think the players are important, how we can pay them. I think they deserve to be paid well if they are great players. But yes, I think it could be settled without much.

Senator Specter. Let me explore the issue of two more subject matters before deferring to Senator Hatch who has just joined us. One is the question of settlement which we have had some testimony earlier today on the subject which was opened by Councilman Cunningham who testified here last week that there was a settlement proposal which went before the NFL on a 17 to 10 vote under which the Oakland Raiders would stay in Oakland and there would be an expansion team in Los Angeles which would be yours.

Was there ever any such settlement proposal which went before the owners for such a vote?

Mr. Davis. I do not know if it definitely went before the owners for a rollcall vote. It went before the owners based on a straw poll of the owners. There were other incidentals relative to that. They are not small.

There was some money that would exchange hands. In other words, the Raiders would get a certain amount of money for court costs and damages that they had incurred. I think the figure was $10 million. I know it was $10 million, and that the Los Angeles Coliseum would get a figure of $7½ million plus a franchise within 2 years, possibly right after the olympics. That was the proposal of Judge Pregerson in consert with the attorneys of both sides.

Now, it even went further——

Senator SPECTER. Were you agreeable to that, Mr. Davis?

Mr. DAVIS. I was agreeable to aspects of that, yes, sir.

Senator SPECTER. Where would you have ended up? With a new franchise in Los Angeles?

Mr. DAVIS. It is a possibility or I would have stayed in Oakland.

Senator SPECTER. Well, if you had stayed in Oakland, would your other problems have been solved with respect to the stadium?

Mr. DAVIS. Yes; that is what I was going to tell you. The other incidentals were that the Oakland stadium would be fixed up and remodeled to have approximately 120 boxes, would have movable bleachers and would have part of the Mayor Wilson-Cornell Maier plan that we thought we could implement way back in 1980 but could not.

Yes; it was a definite proposal. It was there. In fact, during the trial, one of the owners came out to Los Angeles and asked me to meet with him, and I did meet with him all afternoon, and I think you know the owner. I met with him all afternoon, and he thought it was doable.

He would go to Rozelle immediately. They came back to me with one other point, a sticking point was I must take the expansion franchise in Los Angeles. And I said I would consider the other possibility provided we had the improvements in Oakland and all of those things and LA was taken care of. I would never have left Los Angeles in the lurch.

And the Los Angeles people knew of this, but again, they still thought they could get a hung jury, and if they could not get a hung jury, they could come into this forum and get some kind of legislation retroactive or something that would knock it out anyhow.

Senator SPECTER. But you did go back to the league and say that you would stay with the Raiders in Oakland.

Mr. DAVIS. Yes, sir; I said I would give that consideration, yes, sir; very much so.

Senator SPECTER. Well, I do not quite understand you when you say give it consideration, whether there was a commitment on your part or whether the question was still open.

Mr. DAVIS. I said if that was the final point, that would be the decisive point, I would go along with it.

Senator SPECTER. Senator Hatch?

Senator HATCH. Mr. Alioto, do you know of the two bills that are involved here in this particular hearing—the DeConcini and the Specter bills?

Mr. ALIOTO. Yes; I do.

Senator HATCH. If you had your choice, would you like either of these bills to be enacted into law?

Mr. ALIOTO. I think you should just leave the situation precisely as it is.

Senator HATCH. In other words, you would leave intact present law?

Mr. ALIOTO. Yes. The present law permits a rule of reason to be applied. If you let the thing alone right now, the NFL would be forced to adopt objective standards under rule 4.3. If you pass the DeConcini bill, they can right now make their 4.3 rules more restrictive than they are and actually return to a unanimous vote.

I think that because of the trial, because of the challenge by Mr. Davis and because of his position that objective standards ought to be applied to determine whether or not a transfer is in the public interest, and those objective standards should include the entire situation of the community in which the ball club has played over a series of years, because of his consistent position and his victory, I think the NFL will be forced to put those standards in rule 4.3.

But if you pass the DeConcini bill and give them a complete whitewash and a complete exemption from the antitrust laws, as you are proposing to do to people who have been found to breach fiduciary relationships and to act in bad faith and unfairly, if you do that, you are just giving them a license to become even more restrictive and more oppressive. And that is how I view it.

Senator HATCH. Do you feel that the general public and sports fans in particular have any interest in this matter? Do you think that they would be better served by either of these bills?

Mr. ALIOTO. I think that they would be worse served by those bills because it does not give them any opportunity to resort to the antitrust laws as a remedy. Let me give you just two examples.

When Mr. Rosenbloom left the Los Angeles Coliseum to those greener pastures down in Anaheim and everything that went with it—Mr. Davis said he did not begrudge him that. He made a deal that was at least comparable to the deal that the Giants made when they moved out of Yankee Stadium into New Jersey. We never did begrudge them that.

That community at least could go to Mr. Rozelle and say, "All right. We lost that competition. We have exhibited professional football since 1946. We have been in that business since 1946, and we, as Americans, we have citizenship rights, too. We want to be in that business, and we want to compete for it. So we would like an expansion team."

Mr. Rozelle told them to get lost, and he says, "All right. There are four teams that are looking around for a home, Minnesota, Miami, Baltimore, and the Oakland Raiders, and they are dissatisfied. So we will simply go into the marketplace and compete with one of those teams on the competitive merits.

Now, if you pass this bill, you will have stopped Los Angeles from doing that. You would have stopped that local community that was injured, that stadium that was injured, and it is just total nonsense to say that Anaheim and Los Angeles are the same town just as it is total nonsense to say that Yankee Stadium and Rutherford, N.J., are the same location. They simply are not.

Now, one other example. When Mr. Mara took the Giants out of Yankee Stadium and brought them over to Rutherford, N.J., Mayor Lindsey made a fuss about it, but he finally said, "All right. My other recourse is to get another team."

At that point, he could not get a team if Mr. Mara vetoed the idea. That is how monopolistic and how restrictive that thing was. Furthermore, he could not get a team unless in bringing a team in, he agreed to pay the Jets some money.

And we asked Mr. Rozelle on the stand, "Is that right? Could that have happened?" He says, "Yeah, that could have happened." And they had the property right or a contract right. We thought what they had was a monopolistic combine in violation of the antitrust laws.

But if you pass these bills, you would take away from the city the right to go to court and say that what these people are doing is too restrictive, unduly restrictive, unduly monopolistic, and we want the courts to say so.

So all you would be doing by passing these bills is cementing a cartel which already exists, and you really are not doing anything else.

Senator HATCH. On the other hand, many cities issue public municipal bonds and other types of financial arrangements in order to build these football stadiums.

The Specter bill, although it would apply an antitrust exemption, does recognize in a public interest in having a football team in an area and offers a certain amount of protection of that public interest.

Let us assume that Senator Specter took the antitrust exemption out of his bill. Would you find any other provision of his bill to be worthwhile?

Mr. ALIOTO. We had suggested it would be very, very worthwhile. We have suggested that if you leave the situation alone right now with what you have done with these hearings, with what Senator Specter has done proposing it, the NFL is going to be forced to adopt these standards.

And when they adopt these standards, they are going to have in there something that Mr. Rozelle forgot all about when he listed standards for transfer, namely, fan loyalty and the local community interests.

Mr. Davis has been insisting on standards, and one of those standards obviously is the question of whether you can meet the test of fairness to the local community, and so I think the idea of standards as Senator Specter has noticed in his bill is an idea he has been espousing, Mr. Davis has been espousing over the opposition of those who wanted monopolistic control of the situation since at least 1966.

And I think they are going to be forced to do this if you leave the situation alone for a while. So I think you served a tremendous purpose in suggesting to them that unless they adopt their own standards, that the Congress will do it for them. I think they will adopt their own standards.

Senator HATCH. If I understand this correctly, the DeConcini bill would apply the antitrust exemption retroactively?

Mr. ALIOTO. Right.

Senator HATCH. The Specter bill would apply it prospectively?

Mr. Alioto. Well, I think Senator Specter, if I am not mistaken, reserved in his opening comments the question of whether it should or should not be applied.

Senator Hatch. Whether it should or should not be, in the bill, as it is currently written, it would be applied prospectively.

Mr. Alioto. That is correct, and we think it is outrageous.

Senator Hatch. What you are saying is you do not like either the retroactive or prospective application of an antitrust exemption?

Mr. Alioto. I am just talking now as an antitrust lawyer. Let me just say this. Competition has served this industry better than you folks have thought. You had two franchises granted under a cartel arrangement.

You have had the Tampa franchise and you have had the Seattle franchise. So let me tell you what competition has done. In 1957, a ballplayer named Razovich went to the Supreme Court. We happened to have handled the case and got the Supreme Court to say that the NFL did not have the baseball exemption.

The NFL then went to Congress in 1958, and about three times in the sixties up to 1966, to get these exclusive territorial provisions exempted from the antitrust laws, and the Congress has refused to to that.

In the meantime that league that Razovich had started resulted in the NFL taking in three, when that league went out of business, three new teams which came into the picture.

In 1960, they started the American Football League. Six years later, and particularly 4 months after they appointed Al Davis commissioner and he started a competitive drive against the NFL, nine new franchises were granted to the NFL.

They were not granted by some kind of central planning on Park Avenue. They were granted by the competitive marketplace, that process which resulted in nine new teams getting franchises.

I do not know why anybody has to believe that franchises are going to be the product only of some kind of planning by these folks who are sitting down and serving their own interests. I think the competitive marketplace has served football well over these years.

And what you are proposing to do now is to take it away entirely and to permit folks, if the DeConcini bill is enacted, to permit these folks to make their standards even more restrictive.

Senator Hatch. I do have a great deal of difficulty with the retroactive application of an antitrust exemption. There is some question whether we should have only a prospective exemption or not if there is to be any exemption. That is something we all have to look into.

Mr. Davis, are you the first team in the NFL—I am sure this has been covered before, and I am sorry to ask you the same question—but just for my information, are you the first team to want to make a transfer as you tried to make?

Mr. Davis. I would be the first team that—in the NFL? No, not the first team. I would say that the first team in the last 15 years that wanted to move from a territory, let us say over 100 miles; yes.

Senator HATCH. You would be the first team which the NFL prohibited from moving?

Mr. DAVIS. Well, let me make this point to you. They did not really prohibit me from moving. They never even intended, as the court found out, to give me an honest attempt to find out if I should move or not.

They lost on two counts. One of the counts was bad faith and unfair dealing in the courtroom. That was what I was concerned about. The antitrust rule was what the attorneys were concerned about and the Los Angeles Coliseum was concerned about.

I was interested that they did not even give me a chance. They wanted to protect that territory. They wanted to lock me into Oakland, and by the DeConcini bill, they could lock me into Oakland for the rest of my life, tell Oakland, "Do not worry about him; do not do anything for him, because he cannot move," but yet they can go to another city where they got some favorite son, and say, "Look, fix up this stadium or build them a new stadium because otherwise we are pulling that team out of here."

There is no equity in the thing the way it is set right now, and that is what the court found right now, that there is no equity, that these people can do what they want.

I do not know if you heard this point, Senator, but we have the testimony, if you would like to read it, but Commissioner Rozelle said that the main reason that they stopped me from moving to Los Angeles was that the Los Angeles franchise was worth a lot more money than the Oakland franchise and that the owners wanted the Los Angeles franchise for themselves for expansion so that they could split up the money amongst themselves rather than sell an Oakland franchise when they were asked why not put a franchise in Oakland and let him move.

And then someone said you mean they can just vote, eight guys based on their own pocketbook, that was the expression used, they could get the money themselves so they could stop a guy from moving.

He said yes, that is right. And I go back to Senator Specter. There are not standards. There is nothing that tells any one of us what we have to do to move and find friends who will not stop you from moving.

Senator HATCH. I want you to know that I have two sons that are strong Oakland Raider fans.

Mr. DAVIS. God bless them.

Senator HATCH. And as a graduate of Brigham Young University, I hope that Mark Wilson gets a little more chance to play in future months. [Laughter.] I think you have a good quarterback there.

Mr. DAVIS. Let me tell you. Todd Christianson is doing great, and he caught a touchdown.

Senator HATCH. We admire your team. This is a tough issue. I am a strong supporter of the antitrust exemption with regard to baseball. It may seem a little inconsistent then to some to feel the other way with regard to football.

Mr. DAVIS. It may to Mr. Alioto but it does not to me.

Senator HATCH. Let me ask Mr. Alioto one final question. I do not want to dominate this time. I have a number of other questions. Perhaps I can submit in writing.

Mr. Alioto, I have been a strong supporter of the antitrust exemption with regard to baseball. I have some questions here with regard to football. As you know, it has not existed for years.

I am wondering. Are your arguments being made here today, and of course, I understand you make your living from antitrust law, but would you suggest that the baseball exemption be taken away also or do you feel that it has worked better in the way the baseball situation is set up?

Mr. ALIOTO. We are really concerned with the question of whether or not, under the circumstances of this case, and granted the membership of the NFL and certain findings that have already been made in court there. I do not think there should be an exemption from football certainly.

All you are doing is soliciting my private views as to whether or not----

Senator HATCH. That is all. You are an expert on antitrust.

Mr. ALIOTO [continuing.] And not the Los Angeles Raiders views as to whether or not baseball should have an antitrust exemption.

I do not think any business should have an antitrust exemption. The only time that we have granted antitrust exemptions is in return for some kind of regulation. We tell the steamship companies you can fix rates if you want, but then we have some control on any undue enhancements of price.

We tell farmers that you may join together in cooperatives and corporate farmers, too, you know, big farmers, not just family farmers, you can join together in cooperatives, but then we say to the Secretary of Agriculture, you have to keep your eye on them. If there is an undue enhancement in price, we want you to do something about it.

Everytime we have given an antitrust exemption, we have had some other control, some kind of regulatory control. This is the only exemption I know of in history where you just give an exemption, period, and tell them to do anything they want including making their rules even more strictive than they are today, including that. That is what would happen under the DeConcini bill, if you let it pass.

Now, I do not think baseball should have an exemption. It is big business. It is ridiculous to talk of these things as just having sports. I do not think it should have an exemption under the antitrust laws, but that is a private view of mine, and it has nothing to do with the issue that we have at the present time.

I think unless the ball clubs themselves take notice of proper community interests, the Congress ought to step into that. But right now I think the antitrust laws can handle that situation if you will let these cities that are abandoned go out and do something about it.

But under that DeConcini bill, the minute that city is abandoned, it cannot do anything about it.

Senator HATCH.Unless the city agrees. If the city agrees, there is no problem under the DeConcini bill. If the city does not agree, I think there is a problem with regard to the NFL.

Mr. ALIOTO. I did not quite get that, Senator.

Senator HATCH. If the city agrees to the move, there is no problem. If the city does not——

Mr. ALIOTO. If the city agrees to the move——

Senator HATCH. Excuse me. If the NFL agrees with the move, then the city can challenge it under the DeConcini bill.

Mr. ALIOTO. That is correct.

Senator HATCH. Thank you.

Mr. ALIOTO. But the city cannot go out into the marketplace and challenge it. The only way you can challenge it effectively is to say, "All right. If you are going to move down the road, Mr. Rosenbloom, to Anaheim, you go ahead and do it, but you leave me free to go to the Vikings, the Miami Dolphins, the Colts or the Raiders," who were having troubles, who could not get anything done in their local communities. "You leave me free to go to that marketplace."

Now, there is the other side of the coin. Suppose you do as was done here. You tell the Oakland Coliseum officials in almost this language you have these folks here for the rest of their lives as hostages or prisoners. You have them here.

And then the Oakland Coliseum officials on that basis and even when a very decent man like a Mayor Wilson and a very decent man like Cornell Maier with the threat of the Los Angeles arrangement in front of them go down to see Mr. Davis hurriedly the day before the Super Bowl and say "All right. Now, we are going to deal with you," and where the two of them acknowledge in printed press reports that those reforms in the Oakland Coliseum were long overdue, long overdue. The two of them signed press releases stating that, both these gentlemen, and when they acknowledge that the Raiders need a stadium to be competitive in the eighties, and now the stadium which from the standpoint of seating capacity, baseball conflicts and other matters is manifestly inferior and where they acknowledge that the stadium has been inferior since 1973 and that maybe they could not do anything about it," and this is all evidence I am reciting, "and that therefore, they might have to go to a new stadium," now where the community acknowledges all those deficiencies but Mr. Rozelle tells them, "Do not worry about it, they are not going to move," and Mr. Gene Klein comes into the community 3 months before he talks seriously to Los Angeles, before Mr. Davis talks seriously to Los Angeles and says, "Do not worry about him. There are 27 votes against him," and they are not supposed to speak publicly against each other, you know, and Paul Brown said something about Mr. Modell in the book, they fine Paul Brown $10,000. But nobody did anything to Gene Klein when he did this.

And when simultaneously, let me add this element, there are private conversations between Mrs. Joe Rosenbloom before she was Mrs. Frontiere, and Mr. Pete Rozelle from September 1979 to March 1980, the critical period, private conversations in which she is pleading with him not to let the Raiders come down to Los Angeles because she cannot stand the competition, and Mr. Rozelle is assuring her that he will keep them in Oakland, with all of those circumstances, you have got to give the team that is suffering under that kind of victimization the right to go to court under the antitrust laws. And that would be denied under the DeConcini bill. Under these circumstances, I just state it would all be denied.

Senator HATCH. Thank you, sir.

Thank you, Senator Specter.

Senator SPECTER. Mr. Davis, I would like to explore one further question before I am going to have to absent myself, and that is you say that the $4 to $5 million which you are looking for from stadium improvements would make a critical difference to you in being able to compete.

Mr. DAVIS. No; not the $4 to $5 million in stadium improvements.

Senator SPECTER. Well, the boxes, the bleachers.

Mr. DAVIS. The boxes would cost more. The total improvements needed in Oakland right now to allow me to compete in 1980 it would have cost approximately $8 million.

Senator SPECTER. The point is that you are in a situation where you are denied access to $4 to $5 million annually in revenue.

Mr. DAVIS. Yes, sir.

Senator SPECTER. That is the point that I want to pick up. And you say that is a critical aspect. Your essential contention is that by being denied $4 to $5 million in annual revenues you are effectively being denied the right to compete with other teams.

Mr. DAVIS. No. I would even cut it in half. About $2 million at that particular time, yes, sir.

Senator SPECTER. How does that work out? Is not the essential issue on talent the player draft?

Mr. DAVIS. No. The essential issue on talent is, No. 1, that is a factor of it, player draft, the talent that you have, the trades you make. For example, this year I traded the Cleveland Browns for two players who were very high salaried players. One is paid over $200,000, and the other is paid close to $200,000.

Senator SPECTER. So in the trades you pay money?

Mr. DAVIS. No. I inherited by trading for those players very high salaried players because I thought they could create a performance for us that would help us win.

Senator SPECTER. I understand that, but I am trying to come as fast as I can to what the extra $2 million a year in revenues are going to do for you in a competitive sense.

Mr. DAVIS. I can tell you.

Senator SPECTER. Fine.

Mr. DAVIS. Yes, sir. I have salaried employees, staff people. I have scouting. We are the only team in the league that does not belong to a scouting combine. I can enlarge my scouting combine. I can have better practice facilities. I can do everything bigger and better for my whole organization. I make this point to you and you would have to check it for the record, Senator. I am not looking for the money for myself. You can check it out. I am looking for it for my organization and my players, and everything that goes into building a winner organization.

Senator SPECTER. But there are other owners who will have more than $2 million extra a year to spend than Al Davis will.

Mr. DAVIS. Yes, they will.

Senator SPECTER. Then does that not put them on a competitive advantage that you cannot match under your theory?

Mr. DAVIS. I admit, and thank God we have been able to through hard work and whatever else goes with it been able to compete, but I see what is coming down the road.

For example, if we give into the players, and I am not saying we should not, but if we give them less restrictive forms of free agency, for example, the Browns this year went out and signed Cusineau, a linebacker who came out of Canada, for $3½ million over approximately I think it was 3 to 4 years.

I cannot do those kind of things. I cannot do those kind of things right now. They can do those things, and when they do that, when one does it——

Senator SPECTER. $2 million a year will only give you one player or half a player. The point that I am looking toward is you have made a contention that the absence of that $2 million a year effectively destroys your ability to compete.

Mr. DAVIS. Yes.

Senator SPECTER. I do not see the logic behind that.

Mr. DAVIS. Let me ask you this. If every player on the Rams, and say I am competing with the Rams, and we have a domino theory, and say every player on the Rams is making—let us say we have 50 players.

And every player on the Rams is making $20,000 a year more than my players at relative positions. I have got an unhappy situation. I want to be able to compete economically. If their scouts are making $7,000 to $8,000 more than my scouts, I want to be able to compete economically.

Now, I do not let this happen because I am willing to take the brunt myself. I do not let this happen because I will go down to rock bottom to zero or maybe lose some money because I want to stay competitive.

But then, again, I also have a right as an American businessman, I really do have a right to be out there in the marketplace competing. I really think I do essentially because I took the Raiders myself when it was down in 1963 and I built it up, and I think I have a right to compete.

And I do have a responsibility to the community. I felt it and I always will feel it.

Senator SPECTER. Senator Heflin?

Senator HEFLIN. Mr. Davis, I am sorry I missed some of your testimony, and so I hope I am not reiterating on any questions that have been previously asked. But first let me ask you.

Do you think there is a role that the league can play to do something about the drug problem in the NFL?

Mr. DAVIS. God, yes, I do. Mr. Heflin, I have been a proponent of doing something about it and something tough for a long time. I even suggested to the National Football League at a recent meeting that because we have a unique problem, because we have a problem that I think is one of the toughest we have ever had to face as a league, I suggested we buy two facilities, one in Scottsdale, Ariz., and make it a National Football League drug facility.

Yes, I think we have a tremendous problem, not only on recognition of who is involved in drugs, not only on cure, not only on followup, not only on rehabilitation but on penalty. Yes, I am very forceful on it.

I think we have a tremendous problem. I think we have had it for some time, and I think we really got to do something about it that is even stronger than what we are doing.

Senator HEFLIN. All of your suggestions would call for league action.

Mr. DAVIS. Yes, sir. Actually, I correct myself there. It would call for league action, but quite frankly, some of us are doing some of these things without league action individually on our own clubs, because we do not feel there is enough.

Quite frankly, no one in America seems to know the answer to this particular drug that we are talking about and the effects that it has on players, and we are looking for it, but at least the Raiders are taking every step possible, and as I say, I even suggested, it was in our last meeting, that we buy our own facility, the league, so we can take care of this problem and get tough on it.

Senator HEFLIN. All right, sir. Now, during your testimony I believe I correctly heard you say that you believe in complete revenue sharing provided that it is an equal division of the revenue, is that correct?

Mr. DAVIS. That is true, sir.

Senator HEFLIN. You would then support a league vote to that effect?

Mr. DAVIS. Yes, sir, I would if we all shared all our revenues equally. What happens occasionally is when there is something they think that they want to get through to share equally, there is a group in there that has other corporations or other entities or other income that they do not want to share equally.

And the point I make is that they go around and tell everybody that the league shares 97 percent of their income. That may well be true, but we do not share it equally. That is No. 1.

And No. 2, there are a lot of corporations out there that are making a lot money off luxury boxes and concessions and parking that we do not share equally. Yes, I would be in favor of us all sharing all revenues equally, and then let us go out on the football field and compete.

Senator HEFLIN. Then you do not see any real principle that is violated by a league decision pertaining to revenue sharing?

Mr. DAVIS. If you do not add the word "equally in all revenues" I do, sir.

Senator HEFLIN. Well, basically, the word "equal" is not a principal purpose, but it is—in other words, Al Davis' form of revenue sharing, but I am speaking about the principle. You do not have any real objection in the competitive business world to league decisions to share revenue provide it is all equal.

Mr. DAVIS. If that is the way the league wants to go, that would be fine with me. I would go along with that concept very much so.

Senator HEFLIN. All right, sir. Now, there is a lot of discussion on the retroactivity of the DeConcini bill. Do you see faults with that to disturb by congressional action your court decision?

Mr. DAVIS. Certainly, I do, Senator. As I told you, I went through two forums, 2½ years, 7 months in court, and the first trial was a hung jury. There were two counts that we were fighting on.

One was whether the antitrust rule was legal or illegal, and No. 2, did the league operate in bad faith and unfair dealing toward the Raiders and myself.

The first time was a hung jury, although it was an 8 to 2 vote on our side. The second time was a 3-month trial. We won unanimously on both counts, and the thing that was important to me was the vindication that even if the rule were legal, they had used it illegally, bad faith, maliciously, and unfair dealing.

And so certainly I would be opposed to it, and I really hate to even talk about it in this forum. I think we are the only country in the world that has a jury system, and this jury was picked by the National Football League. This jury had questionnaires some 50 to 75 pages before they could be screened and picked.

We went through days of picking jurors. I did not, but the attorneys did. And now after it is all said and done, after we get a Federal judge to grant us an injunction, and if that is the law of our land so be it, but I just do not think it is fair. I do not think it is equitable.

Senator HEFLIN. Let me ask you this. As I understand it, the city of Oakland has gone to court which sort of shocks me under a concept of eminent domain that they could take a private business and, in effect, not nationalize a business but municipalize a business if there is such a word as municipalize.

That has gone through the court and has now been approved by the, as I understand it, the California Supreme Court.

Mr. DAVIS. No, sir. Let me make this statement to you, sir. First of all, the community of Oakland has gone to court on eminent domain along with the help of the National Football League, who should not even be involved in this. That is another act of bad faith. What they are doing in condemnation of a professional football team is, in my mind, unconscionable.

The first court they went to was in Monterey, Calif., the lower court, and it was thrown out. The second court they went to was a court of appeals in the State of California, and it was thrown out.

In other words, they said they had no case. There was no reason for this. They went to the California State Supreme Court, and the California State Supreme Court said that they have a right to a trial and that they should go back to the lower court to find out if they do have this right of condemnation under eminent domain, and that is all they have ever said, the right to a trial.

And by no means am I going concede in this country that some city can come in and confiscate my team and my property based on eminent domain, and even the judge in Monterey about 1 month ago when the Oakland people went in and asked for a stay to keep me in Oakland this year said there is no reason to because all the California State Supreme Court said was that you have a right to a trial, and there was no showing that they certainly would win the trial by any means.

Senator HEFLIN. Well, as I understand it, the California Supreme Court held that within the purview of eminent domain that a decision favorable to the city of Oakland could possibly occur.

Mr. DAVIS. Yes, sir.

Senator HEFLIN. Now, it is my understanding that you have made an effort before the California Legislature to change the law pertaining to that; is that correct?

Mr. DAVIS. No, sir.

Senator HEFLIN. There has been no effort on your part——

Mr. DAVIS. Yes; there was an effort on the part of the Los Angeles Coliseum to change the law.

Senator HEFLIN. You have not participated in it yourself?

Mr. DAVIS. No, sir, I did not participate. In fact, stayed away from it, because quite frankly, I am willing to take my chances in court. I am willing to go to court. I have been in court so long now that I am willing to finish in court.

And I do not honestly believe that anyone is going to allow an eminent domain condemnation case to occur with a professional football team or something that I own and built up. I just do not believe it.

And if it happens, I accept it as a part of the American way of life, but I do not believe it is going to happen.

Senator HEFLIN. Well, really I come down to the principle of legislative interference with court decisions after they have been made and the issue of retroactivity. As I see it, if you are not involved, it might be different, but if you were being involved, you are adopting inconsistent positions.

Mr. DAVIS. I would accept that, and that is another reason why I was not involved, because I did not want to get in an inconsistent position. I have not been involved in that. None of my attorneys have been involved in that.

As I told you when I first started, I have never been before a Senate committee or a House committee. I may be naive. I do know the President quite well because he gave a trophy each year in California for the professional football team with the best record. So that is how I got into domestic politics locally.

But I admit I am interested in foreign affairs tremendously, balance of power and things like that, but not domestic politics.

Senator HEFLIN. But do I understand you that you, in effect, condemned the effort to legislatively interfere with the California Supreme Court?

Mr. DAVIS. No; I do not condemn anyone for going through the proper channels, whether it be the National Football League or the Los Angeles Coliseum of trying to get something done. I do not condemn them for trying to do it.

Senator HEFLIN. Then you do consider it to be within the legitimate scope of activity to legislatively interfere with a court decision?

Mr. DAVIS. If they can get it done, if you, in good conscience, can, after the jury system and the court system of the United States award a verdict to me after 2½ years of court system in good conscience can retroactively throw out that decision on a vote, then that is your purview. That is your prerogative.

If the National Football League can come in here and say to you, "We are not going to expand unless you do this for us," and threaten you people and tell you what to do in essence and you do it, I cannot stop it, and I will have to accept it as part of our system and our way of life.

Senator HEFLIN. But really there is not much difference between the effort to legislatively disturb the supreme court decision of California and the effort to disturb the court decision in your case in the Federal court; is there?

Mr. DAVIS. No, no. First of all, the Federal court here has made a decision. They lost on both counts. There is an injunction that was given by a Federal judge. Nothing has been done in those other courts. All they have is a right to a trial. Nothing has been done.

Senator HEFLIN. For some reason, somebody wants to interfere with it.

Mr. DAVIS. But I am not asking anybody to interfere. I am telling you I will call all this off tonight, Senator Heflin, what I am talking about is we will get out of this forum. I will try and appeal to the Los Angeles people to get out of the other forum.

I do not want to be in these forums. I would rather be back there getting ready for the Chargers this week. But I do not want to be here.

Senator HEFLIN. Really to me after I found out about that I was shocked to find out that the California Supreme Court had authorized that you could condemn a private business under the theory of eminent domain.

That is worse than nationalizing when you municipalize.

Mr. DAVIS. You would be a hell of a witness in our case.

Senator HEFLIN. It just shocks me.

I believe that is all.

Senator HATCH. Mr. Alioto, just one more question. As a lawyer who practices in California, what kind of a decision do you think the Supreme Court of California made when they decided that you can bring a case of this sort under eminent domain theory?

Mr. ALIOTO. I think that when they passed the eminent domain amendment that nobody was thinking of a situation like that. As in many cases, you write legislation and over the years it gets interpreted a little bit more broadly than anybody ever expected.

And I think that is what happened here, and it was the Los Angeles Coliseum that went to the legislature. We did not even know about it. I did not know about it until much later, as a matter of fact, because I was away. I did not know that the Los Angeles Coliseum went there to protect that situation.

I think it is bad. I think it is bad law. I think it is a bad concept, and I think it was outrageous that the National Football League collaborated with the city of Oakland in that eminent domain case to the extent which they did, and some of the owners were outraged.

We asked them the very same question you asked me. "Do you know about Mr. Rozelle making this kind of a deal with the city of Oakland to waive the NFL constitution in order to make this eminent domain possible?"

They said, "We not only did not know about it but I am opposed to it." Mrs. Frontiere among others. I think it is outrageous that a court can say because a facility has a public purpose, namely, a stadium, that you could condemn the business which operates in that facility and say that that, too, is infected with aging.

Senator HATCH. Do you know of any other case under eminent domain theory where that was permitted?

Mr. Alioto. I do not know of any other State that does it. On the same basis, if TWA threatened to move out of the Oakland Airport, they could take over TWA, and I do not know of anybody that carried the eminent domain law to an extent that we think is unconstitutional.

Senator Heflin. I never heard of eminent domain in personal property, immovable property.

Mr. Alioto. I think you have only in this sense. There are sometimes when you condemn a piece of real property, and there are certain pieces of personalty, whether they be mechanical devices which——

Senator Heflin. Fixtures. They become part of the real estate.

Mr. Alioto. What the Supreme Court of California has done is very, very unusual. There is no doubt about it, but I point out to you that the NFL was not above using that device to try to get Al Davis.

Senator Heflin. Well, I will give you this. The California Supreme Court has had a history of that.

Senator Hatch. I might mention the California Supreme Court has made some of the more unique decisions in State constitutional history.

We thank you for coming. We appreciate hearing your testimony. It has been enlightening. We will go on to our next witness now.

Mr. Alioto. May I just say one thing for the record?

Senator Hatch. Yes, sir.

Mr. Alioto. Mr. Davis has submitted a written statement. It is not denominated as his personal statement.

Senator Hatch. His written statement will be entered in the record in full.

Mr. Alioto. And we would like to make one other request if we might. Maybe this is out of order, but we would like to make it on behalf of the Los Angeles Raiders. We think that the issue of antitrust exemption is so important here and that, in effect, it would permit a higher concentration and more restrictive practices than even have been indulged by the NFL over the years.

We would hope that there would be no attempt to do what was done in 1966 and pass this legislation on some kind of abbreviated procedure. We would at least make that request.

Senator Hatch. Well, I cannot solve that problem, but I will, without objection, admit Mr. Davis' statement in full.

Mr. Alioto. Thank you.

[The prepared statement of Al Davis follows:]

Raiders LA Coliseum v. NFL, et al.

SUMMARY OF FACTS

Statement by Al Davis, Managing General Partner
Los Angeles Raiders

September 20, 1982

The following factual statements are fully supported by the record of evidence in the above-entitled action. The entire record is offered to the staff of the Senate Judiciary Committee for such substantiation as it wishes to make.

A. THE ULTIMATE FACTS

1. What we proved in Court after a two-month trial and what the jury's verdict and the Court's judgment establishes:

    a. In blocking the move to Los Angeles, the NFL acted maliciously against the Raiders in breach of the NFL's obligation to deal fairly and in good faith with the Raiders, even assuming the rule was legal;

    b. the NFL violated the antitrust laws by using its transfer rule (4.3) to restrain the move of the Raiders to Los Angeles.

2. The evidence established conclusively that:

    a. from 1967 to the filing of the Coliseum's complaint, the NFL was advised by its lawyers that their Rule 4.3 (invoked to stop the Raiders) was a violation of the antitrust laws. NFL chose to ignore this advice in favor of the monopoly power and profits the Rule afforded its members. These included:

        (1) the power to establish exclusive territories and protect them against invasion by competitors;

        (2) the power to exact millions of dollars in exchange for consent to a second team playing in an NFL exclusive territory;

        (3) the power to grant franchises at multi-million dollar prices and divide the money among themselves;

        (4) the power to deprive traditional stadiums of their right to exhibit professional football;

        (5) the power to inhibit the growth of aggressive competitors such as the Raiders;

        (6) the power to walk away from established relationships (e.g., Rams-Los Angeles Coliseum) in favor of lush personal deals elsewhere with the assurances that other NFL owners would refuse to deal with the abandoned stadium (e.g., Yankee Stadium).

B. THE SALIENT FACTS

1. In July of 1978, the Rams announced that they were deserting the Los Angeles Coliseum in 1980 in favor of greener pastures in Anaheim, including a multi-million dollar land deal based on exercising options from a base which, to start with, was substantially below market.

2. The NFL approved the transfer without investigation of any financial factors.

3. The Los Angeles Coliseum, which had been exhibiting professional football since at least 1946, asked the NFL for an expansion franchise to fill the void created by the Rams' departure. Mr. Rozelle rejected this request.

4. The Coliseum then went to the marketplace to compete for an existing team, undertaking negotiations with the Minnesota Vikings, the Oakland Raiders, the Baltimore Colts, and the Miami Dolphins.

5. The Minnesota Vikings, with the active collaboration of Mr. Rozelle and the NFL, used the Los Angeles Coliseum as a threat to exact a $74,000,000 domed stadium from the taxpayers of Minnesota. To a lesser degree, the Colts and the Dolphins used the Coliseum as a threat to secure better deals from their local public officials.

6. The Oakland Raiders' lease was scheduled to terminate by its terms on December 31, 1979. The Oakland authorities refused to negotiate a realistic arrangement necessary to permit the Raiders to compete effectively in the 80's until the competition from Los Angeles became known. An offer to the Raiders made by the Mayor of Oakland and Mr. Maier, the Chief Executive Officer of Kaiser Industries (which Davis was on the verge of accepting), was repudiated by the Oakland Coliseum officials when it became public that NFL proposed to keep the Raiders in Oakland regardless. Both the Mayor and the Kaiser official publicly criticized the Oakland Coliseum officials for repudiating their authority to act. The internal minutes of the Oakland Coliseum prove that the Mayor and Mr. Maier had the authority they exercised.

7. Frustrated by this repudiation, the Raiders on March 1, 1980 signed an agreement with the Los Angeles Coliseum to play in a remodelled stadium with 100 luxury boxes beginning the 1980 season (the Raiders had fulfilled all of their obligations under the Oakland lease and extended the original five-year term of 1966 to fourteen years of occupancy ending in 1979. At the end of the lease, the Oakland Coliseum was the worst or second-worst stadium in the country in terms of seating capacity, playing field, locker rooms, and baseball conflicts).

8. The Oakland Coliseum is the most prosperous public stadium in the country and does not need Raiders income to operate in the black. Without the Raiders, the Los Angeles Coliseum would be bankrupt. Since the Rams deserted to Anaheim, the Los Angeles Coliseum has operated in the red. The Oakland Coliseum has a full schedule of baseball, a spring-league football team, and a virtual promise for an NFL football expansion franchise.

9. Not until the second trial were the Raiders and the Los Angeles Coliseum able to confirm that Rozelle and the NFL owners wished the Los Angeles franchise (in their good time) for themselves, to sell, to divide the money among NFL members, to control the ownership of the team and be influential in selecting key management personnel. Mr. Rozelle, at the second trial, admitted this and freely acknowledged that NFL wanted Los Angeles because it was much more valuable than Oakland and would bring more money to the owners.

10. Part of Mr. Rozelle's and the NFL's plan to keep the Raiders in Oakland involved their collaboration with Oakland officials to condemn the Oakland Raiders franchise under California's eminent domain laws. This collaboration included a secret agreement that NFL would select the new ownership after Oakland stripped Davis and his partners of their ownership interests. This involved additionally a disclosed promise by Mr. Rozelle to waive the NFL's constitutional provision against public ownership of an NFL franchise.

11. Mr. Rozelle's credibility as a witness was completely destroyed in the first trial resulting in NFL substituting Tex Schramm, President of the Dallas Cowboys, as the principal strategist and spokesman in the second trial. Mr. Schramm's credibility in this role was substantially impaired in the second trial.

12. Al Davis was always opposed to Rule 4.3 because of his own and NFL's lawyers' unequivocal advice that the Rule violated the antitrust laws and further that team transfers should be based on objective guidelines rather than subjective votes by competitors, which could be based (as Rozelle and Schramm admitted) on envy, greed, caprice, whim, or a belief that monopoly was better than competition.

13. Inherent in the jury's antitrust verdict and the judgment upon which the Court based the injunction against NFL, was a factual finding that NFL breached its obligation of good faith to the Raiders by acting maliciously in many areas, some of which included:

a. A secret agreement that the NFL would select the new owner of the Oakland Raiders in the event that the Eminent Domain suit succeeded. The practical effect, as

Mr. Rozelle admitted at trial, of this agreement was to exclude Mr. Davis, as an owner, from professional football forever.

b. Deliberate destruction of the Raiders' ability to deal with the Oakland Coliseum by making public statements that in substance signalled the Oakland Coliseum officials that they could in fact deal with Mr. Davis as a hostage.

c. A sneak lawsuit brought one day after an NFL owners meeting in Dallas, Texas in March of 1980, at which NFL went through a charade of having an objective meeting to determine whether the Raiders should be given the right to move.

d. An attempt to get a Receiver appointed through the above-mentioned lawsuit, to take over the management of the Raiders (this attempt proved abortive when the Players Association intervened in the action).

e. Attempting to cut off Mr. Davis' bank credit by sending threatening letters to the banks exhorting them not to deal with the Raiders in connection with their L.A. move.

f. Threatening letters to the Supervisors of L.A. by NFL officials, which included a veiled threat that dealing with the Raiders would result in prejudicing the City of Los Angeles on new NFL franchises.

g. The refusal to take an informal vote as was the custom of the League in other matters, to detemine whether the Raiders should be permitted to move.

14. It has recently been confirmed by an affidavit from NFL filed in the L.A. action, that NFL has withheld a part of the Raiders' television money to finance the L.A. suit against the Raiders, to prosecute other lawsuits against the Raiders, to lobby Congress for a bill that would nullify the Raiders' court victory, to send public relations men throughout the country to implement these moves, and to entertain newspapermen and others on a lavish scale to induce them to place the news regarding this trial and its related actions in the light most favorable to the NFL. Upon demand, the NFL has refused to disgorge this money, which is reliably estimated to be in the area of $500,000, being one-twenty-eighth of all the sums expended for the above purposes after the Raiders aligned themselves with the L.A. Coliseum.

15. Competition has kept football vital. The competitive threat of the old All-America conference and the AFL opened up more cities than the granting of franchises by the NFL.

16. The NFL has the worst win-loss record in litigation among major industries in this country. This marked proclivity for unlawful antitrust behavior should not be rewarded by granting it an exemption from the Sherman Act.

17. NFL's doomsday predictions are a pattern of conduct used to exact unnecessary special privileges:

a. When Congress forced the anti-blackout rule, Mr. Rozelle lamented that team finances would be substantially damaged. All now agree that just the opposite has resulted.

b. When the Courts knocked out the draft (by owners only), Mr. Rozelle said the results would be calamitous. Instead, the owners then sat down with the players and worked out a draft system that was legal and equitable to the players.

c. When the Rozelle rule was knocked out as an antitrust violation, Mr. Rozelle publicly shed his patented crocodile tears predicting irreparable damage to the game. Instead, the owners, with the participation of the players, worked out an anti-raiding provision that is legal and equitable.

d. Mr. Rozelle now predicts damaging confusion if Congress does not exempt his practices on franchises from the antitrust laws, and threatens to withhold all franchises. The history of professional football proves that the best League expansion occurred when the AFL engaged the NFL in a competitive war. The current demand for Congressional exemption as a condition for granting new franchises should be rejected as a pressure tactic.

18. The NFL is composed of 28 separate owners. There is no need to clarify the antitrust laws with respect to whether the NFL is a single entity instead of a league composed of twenty-eight competitors. Where the need to cooperate is evident, the Courts have permitted the NFL to cooperate. When "cooperation" becomes anticompetitive, the Courts have (generously, some think) afforded NFL a "rule of reason" opportunity to justify its conduct. Moreover, two courts have held (on extensive factual records) the NFL's practices are not shielded by the concept that NFL is a "single entity." So far as Rule 4.3 is concerned, NFL re-adopted it in

1970 against the advice of its lawyers (and AFL lawyers) that it victimized third parties in violation of the antitrust laws. In the Los Angeles trial, NFL lawyers stipulated that since at least 1969 NFL had been advised by its lawyers that Rule 4.3 was "highly vulnerable" to antitrust attack. The stipulation was in substitution for introducing the highly prejudicial documents to that effect.

19. In the Los Angeles case, the judgment was that Mr. Rozelle and NFL violated not only the antitrust laws but also their obligation to deal fairly and in good faith with respect to the Raiders franchise.

20. Last year the Raiders lost approximately $1 million. The Rams made at least $4 million, and have this advantage virtually built in for the next several years by reason of the interference with the Raider-Los Angeles Coliseum contract of March 1, 1980. This, despite the fact that the Raiders possess the best win-loss record in professional football. In the competitive picture of the 80's, this financial disadvantage is bound to reflect itself on the playing field.

21. Mr. Rozelle slipped in his testimony before Congress to admit that NFL owners "would juggle the books" to falsify profit levels if a standard of profitability were put in legislation regarding team re-location.

22. The Raiders violated no contractual obligations when they agreed to move to Los Angeles. They have appreciated the patronage of the approximately 14,000 persons and corporations purchasing tickets. They were prepared to remain in Oakland under the Mayor Wilson-Maier propsal, but that intention was frustrated when the Oakland Coliseum officials repudiated that proposal.

23. The Oakland Coliseum was not built primarily for football. Baseball signed a twenty-year lease. Davis' predecessor (Mr. Wayne Valley) signed but a five-year lease for the Raiders, with a built-in formula which recognized the team might move before the expiration of the five years. The Baseball lease contained a series of priorities over football.

24. It was recognized by the general manager of the Oakland Coliseum, as early as 1973, that baseball's priorities and configuration would permanently impair the ability of the Oakland Coliseum to deliver a first-class football field. He spoke of having to build an entirely new football stadium. The deficiencies he acknowledged in 1973 remained unremedied (indeed, aggravated), on December 31, 1979 when the Raiders tried to move to Los Angeles.

25. The Oakland Coliseum officials have a long record of troublesome relationships with their tenants. They have filed or officially threatened to file lawsuits against baseball, hockey, and football teams. After the baseball team won three world series, a dispute with the Coliseum became so acrimonius that attendance at baseball games eroded to the point where on specific dates the attendance was the lowest in the modern history of baseball.

26. In 1965, one year before the AFL-NFL statute was passed. Lamar Hunt, the founder of the American Football League, had a long meeting in a San Francisco Airport hotel room with Wayne Valley, then a general partner of the Oakland Raiders, and offered the Raiders $2,000,000 if the Raiders would agree to transfer their team from Oakland to the Pacific northwest. Mr. Valley rejected the offer.

Senator HATCH. Is Congressman Julian Dixon here?

[No response.]

Senator HATCH. If not, then we will go to the Honorable Lionel Wilson, the mayor of Oakland, Calif. Mayor Wilson, we are happy to have you with us.

STATEMENT OF HON. LIONEL WILSON, MAYOR, OAKLAND, CALIF.

Mayor WILSON. Senator Heflin, I deeply appreciate the opportunity to testify before you today on a matter of great importance both to Oakland and to other major league communities across the country.

I endorse Senate bill 2784 in the strongest possible terms. At this time, I would request that my prepared statement as well as my February 10 [1] testimony before the House Judiciary Committee be made a part of the record.

Senator HEFLIN. Hearing no objection, it will be so made.

Mayor WILSON. I have an oral statement prepared with some modifications to it that I will use, if I may, Senator. We lawyers have a way of becoming long winded at times. I know in my 16½ years as a judge I was always critical and I find that now that I am no longer a judge and that I am a practicing lawyer I am guilty at times of the same thing.

In my 16½ years as a judge, the last 13 in which I served as a superior court judge, I do not believe I have ever presided over any trial where I heard so many misstatements of fact and misrepresentations as I heard here.

Senator Heflin, Senate bill 2784 will provide important protection for fans, taxpayers, and communities. Dozens of mayors representing cities from 21 States have endorsed the bill because they understand the contributions that sports teams and communities make to each other.

They recognize the injustice in the Los Angeles decision and know that without Senate bill 2784 what happened in Oakland this year could happen to their city next year, and I might say at this time when you talk about the injustice that happened in Los Angeles, you heard a constant reference by Mr. Davis to two tribunals.

He was talking about the first and second trials that were held in Los Angeles in the U.S. district court. Those tribunals were both made up of people from the area in and about Los Angeles.

And we know that very clearly from polls that were taken later that there was no way that Oakland could have had a fair trial before a tribunal made up as those panels were any more than Los Angeles Coliseum could have had a fair trial if that case had been tried in Oakland.

We, in California, have a provision under which when, if A sues B and B lives in another county and B requests a change of venue, it is automatic under the law in California. That is how the eminent domain case happened to be now as it presently is in Monterey because one of the defendants, one of the other owners, and incidentally Mr. Davis, as I understand, owns 20 to 25 percent of the stock of the Raiders but controls it absolutely by virtue of a contract which has been tested in court and which gives him the right to do so.

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[1] See oversight hearings held before the Subcommittee on Monopolies and Commercial Law of the Committee on the Judiciary, House of Representatives, on "Antitrust Aspects of Professional Sports."

But in any event, the case never could have been heard the way it was heard in the Federal court, and we do not feel that we had a fair trial.

With reference to the bill itself, put simply, this is a public interest bill, a taxpayers protection bill and a bill that protects voluntary league decisions to keep teams in cities where they have been highly successful.

And Senate bill 2784 is not in any respect an antiplayer or antiunion bill. I am shocked and I think this committee should resent the blatant effort of the National Football League Players Association to use this bill to advance its collective bargaining objectives.

A recent former president of that players union told this committee just last week that the question of the bill's effect on player and union rights in professional sports, quote, "has a simple answer. This bill will have absolutely no effect on player or union rights or privileges," end quote.

I fully understand the desire of the National Football League players union to secure a fair share of National Football League revenues in collective bargaining.

But I also know, as was reported in many newspapers over the weekend, that this is not a routine labor dispute and that these players are already among the highest salaried persons in America, including mayors and legislators.

The average National Football League player salaries last year were approximately $100,000, and the Washington Post reported Saturday that under the union's current proposal, and I quote, "the average National Football League veteran would have earned twice as much this year as in 1981, up to $330,000 for a 12-year veteran," end quote.

Minimum salaries would have almost quadrupled to $81,000 for this season. Frankly, Senator, we have serious unemployment problems in our greater Oakland community, and we have hundreds of thousands of citizens who have never and will never see salaries of that type. All they want to see is the Oakland Raiders playing in Oakland.

And I urge the Congress not to permit the sports communities of America to be held hostage to the National Football League management, labor-management issues.

In my remaining time, Senator, I primarily intend to discuss why it is fully appropriate to apply any legislation to the transfer of the Oakland Raiders to Los Angeles.

Senator, it is both fair and critical to apply this bill to the Oakland Raiders' attempt to abandon our community. Both bills currently before the committee are intended to restore the Raiders to Oakland, and I applaud Senator Specter's nationally televised remarks in which he very eloquently explained why it is so unjust to break up the 22-year marriage of the Raiders and Oakland.

Let me offer these further thoughts for your consideration, sir. First the Raiders' economic survival is not at all an issue. In 1979, the year before the Raiders announced their intention to move, they had the third highest gate receipts in the National Football League.

In their last two seasons in Oakland, their profits had averaged approximately $1.8 million. They had the highest ticket prices in the National Football League and still had thousands more requests for season tickets than they could accommodate.

Every game at the Oakland-Alameda County Coliseum for 12 consecutive seasons was sold out. I am told that in 1982 if the Raiders were in Oakland, their profits would be substantially higher than in 1978 and 1979.

If this is so, if the Raiders could be so profitable in Oakland, one might ask why we in the Oakland community did not work with the league itself to try and keep the Raiders in Oakland.

The answer is simple and I think most unfortunate. Our coliseum representatives did try to work directly with the National Football League, and when Mr. Davis learned of this, he told our coliseum representatives that if they did so, he would break off all negotiations to stay in Oakland.

This was at a critical time in early 1980, and faced with this threat from Mr. Davis, we could not, of course, take steps to seek assistance from the National Footbal League itself or from Commissioner Rozelle.

Second, Mr. Davis has not settled legal right to be in Los Angeles. The California Supreme Court has confirmed our right, the city's right to purchase the team in eminent domain.

And speaking of eminent domain, I might say also, Senator, that, yes, this is a unique theory. The statute was amended in 1975 to include personal property as well as real property as the subject of eminent domain.

I might also note, sir, that the writer of the opinion, and in my 16½ years on the bench, I have seen seldom better written opinions and more well-reasoned opinions was not one of the members of the California Supreme Court who it has been referred to has been involved in somewhat unique decisions.

This decision was written by Justice Richardson, the last remaining member of the California Supreme Court appointed by President Ronald Reagan.

And you might be interested in knowing the reason why Justice Richardson was selected to write that opinion. Normally eminent domain opinions fall within the purview particularly of Justice Stanley Mosk who seemed to be the expert on eminent domain on the California Supreme Court.

However, in this instance, that decision is based as much on law of the cities as it is on eminent domain, and although technically it is still an eminent domain case and that is what provided us with the jurisdiction, but that law, and I would certainly would refer it to you, sir, as one worth reading, that opinion does contain substantial references and specific references to other factual situations.

And it has been suggested that if we could do this in this instance, why could we just not take out any business, for instance. And there is a very good reason for it, and that is because we could not show a public use and necessity.

There are simply specific and peculiar facts and circumstances relating to Oakland and the background, the history, the fact that this stadium was built for the Oakland Raiders, that Mr. Foss who was then the commissioner of the American Football League promised the Oakland leaders and governmental and private that if they would build a stadium and that if a team were supported, that they would keep it in Oakland.

Similar representations were made to Congress. This stadium would not otherwise have been built had that kind of commitment not been made. So this is a special set of circumstances.

And although the idea of eminent domain is one that overwhelms many people, including some of the members of the Monterey superior court, but I would also remind you, Senator, that this was a unanimous decision, and that is a rarity on the California Supreme Court these days and has been for some years.

Although it is true that the chief justice wrote what she designated a concurrent and dissenting opinion, but even the members of her bench acknowledge that it was not a dissenting opinion because she wound up by saying that the majority was absolutely right on the law, but she, too, was simply overwhelmed that the law could be used in this manner.

No city should have to go to such lengths to protect its economic and social interests in a professional sports team, but faced with this direct and irreconcilable conflict between Federal and State law, it is fully appropriate for Congress to step in and, as Senator Specter put it, resolve this mess once and for all.

Mr. Davis, who is here condemning retroactive legislation, speaks out of both sides of his mouth. Now, Mr. Davis—I do not contend that Mr. Davis was personally present during the lobbying that went on in Sacramento in an effort to pass a bill, originally the Campbell bill, and then it was modified into another bill, which would have had the effect of knocking out our—and preventing our—eminent domain action from being fulfilled.

And I do not contend that Mr. Alioto was there on the floor. I spent the day and half the night there, and I did not see either one of them. But we have evidence that there is no question but what they were both involved in the lobbying that went on and curiously some of the San Francisco legislators who did not choose to follow their mayor under the impact of the kind of lobbying that went on upon them, went along with the southern California legislators.

So that he is speaking out of both sides of his mouth. Maybe he is telling you the truth when he says I was not there. I did not participate. And I do not suggest that he directly lobbied any members of that legislature.

But I do represent to you that I firmly believe that he and Mr. Alioto were involved in the lobbying that went on, and I would also like to mention, Senator, that, yes, we were able to fight off that attack at that time.

But there is credible evidence that when the legislature reconvenes in January that another attempt will be made, and this time the weight of the lobbying, the southern California lobbying may be such that we may not be able to effectively deal with it.

I was present in Sacramento the night the massive effort of southern California legislators and others finally failed. The heat generated by their intensive lobbying effort on and off the floor was incredible, and they have not, as I indicated, given up.

Fourth, the Los Angeles verdict serves no public interest or antitrust principle. As a former judge, I always thought that the antitrust laws were meant to promote consumer welfare.

But consider the effects of this verdict. One of the NFL's most successful franchises is being forceably torn out of its community. The league is told that it cannot keep faith with communities.

The city and county are left with an annual debt service of $1.5 million through the year 2005 on a stadium that was built for the Raiders, and I might mention also, Senator, that it was suggested here that those bonds come from east of the Mississippi, the inference being that someone else other than the taxpayers of Oakland and Alameda County are paying for those bonds, but that is absolutely not true.

The city of Oakland and the county of Alameda are jointly responsible for the payment of those bonds through the year 2005 before they will be paid off.

Moreover, the decision is completely at odds with prior antitrust rulings. Only a few years ago a Federal court in Los Angeles ruled that the National Hockey League could prevent a hockey team from leaving the bay area to go to Vancouver. There is no difference in the two situations, except that Los Angeles wanted a football team and the trial was held there, while the hockey case was never tried in Vancouver.

I cannot help, Senator, but comment on the place of trial. How is the public interest or the cause of justice served by letting a Los Angeles court and jury decide whether Oakland deserves to keep its team.

On the eve of trial in January 1982, a survey filed with the district court showed that even a 51-percent majority of Los Angeles residents felt that it was unfair to try the Raiders case in Los Angeles. A similar survey in the Oakland area showed that 74 percent of respondents felt trial in Los Angeles was unfair.

How can our citizens respect the courts in such circumstances?

Because the case was tried in Los Angeles, the interests of my city were repeatedly scorned and mocked in the courtroom. In his final argument, the attorney for the Los Angeles Coliseum appealed to the jury, and I quote from the record:

> Ask yourselves: Would any of you sign a 35-year lease to stay in Oakland, a community that has the highest crime rate in the State of California, that probably has the highest unemployment in the State of California?

And in urging the jury to return a verdict in favor of Los Angeles, that same attorney said, and I quote from the record:

> Oakland is struggling for survival. We know that the long-range future of that community is not filled with the sparkle and the energy and the vibrance and the vitality that we have down here.

Mr. Alioto, who sat here earlier and represented Mr. Davis, was not to be outdone. He asked Commissioner Rozelle if he had heard Oakland referred to as, and I quote from the record, "The murder capital of the United States."

Even after the judge ruled this line of questioning improper, Mr. Alioto continued to press his point that Oakland was not safe for decent people. I do not understand how a verdict arrived at in the most partisan forum in the United States, that is totally contrary to antitrust principles, and it is based on the most blatant kind of provincialism can command much respect in this Congress.

So let me sum it up. There are substantial public interests favoring restoring the Raiders to Oakland. The Raiders are a vital part of our community. They have unified it, have been central to our rebirth and have generated tremendous economic benefits for the east bay.

Thousands of jobs and nearly $180 million in annual economic benefits depend on the Raiders continued operations in Oakland. We stand ready to welcome them back and to, again, fill the Oakland Coliseum, to cheer for them.

As to the size of the Oakland stadium, a reference was made by Mr. Davis to the fact that Oakland is a smaller stadium and I am sure you will note in the record, sir, that he made such references suggesting that Oakland was one of the smallest stadiums in the United States.

In discussing the modifications that might be made to that stadium, I asked Mr. Davis about expanding the size of the stadium, and he said, "Oh, I am not really concerned about the size of the stadium." He said, "Oh, well, maybe 3,000 or 4,000 more would be all right," but he says, "The day of the large stadium is almost over. Pay TV is the wave of the future, and we are going to see those large stadiums empty when pay TV comes into being, and further, the Los Angeles area is the second largest TV market in the country."

Mr. Davis also testified that in early 1980 he negotiated with the Los Angeles Coliseum. The fact is and the record will show there is an affidavit signed by Mr. Robertson, filed in the district court case in Los Angeles, that shows that Mr. Davis was negotiating with the Los Angeles Coliseum early in 1979, a year earlier.

Further, I categorically deny that there is now or ever has been an agreement of any kind between the National Football League and the city of Oakland to permit the National Football League to select new owners if Oakland wins its eminent domain suit.

Further, that the National Football League in any way influenced or directed or participated in the decisionmaking process that went into the filing of that lawsuit. As a matter of fact, it was one day in my office that Mr. David Self who had been our city attorney and later became our city manager and for awhile I had him acting as city attorney and city manager, came to me and said, "Mayor, how would you like to own a football team?"

And I said, "Oh, come on. What are you talking about? Own a football team. I am too busy to engage in that kind of jocular nonsense at this time."

He said, "No, I am serious." And he went on to explain to me that the statute had been amended in 1975, and this took me by surprise as well as it did not only lawyers everywhere but also most of the members of the court with which I served.

And after thinking about it, we discussed it, and after about 10 minutes, I said, "There is no question about it. It makes a lot of sense for us, and let us file that lawsuit."

I then called immediately a special meeting of the Oakland City Council, and in that meeting, the council, I was able to influence the council and obtain the votes, the unanimous vote of the council to proceed with that eminent domain action.

The National Football League played no part whatsoever in that decisionmaking process, and has no agreement and never has had any agreement with the city of Oakland. As a matter of fact, Senator, the city of Oakland itself, the Oakland City Council has never even discussed the question of what happens with this team.

There are a number of options open in the event that we should win that case.

A reference has been made to what has been described as a Maier-Wilson proposal, and it was testified here, too, by Mr. Davis that that proposal was one that would have settled the case.

I categorically deny that. That proposal was submitted by Mr. Maier and myself in Los Angeles or Beverly Hills a day before the Super Bowl in January of 1980 from Mr. Davis. It was a factsheet that went down. It was not the comprehensive offer, but what we referred to as a deal sheet containing what we thought were the major items of issue.

Mr. Davis went down them and he looked at it, and he said, "Well, this is the best thing I have seen yet," but then he went on and he added three or four other items. He never, at any time, said, "All right. A is fine. I can accept A. B is fine. C is not acceptable." Never was there any such acceptance by Mr. Davis.

Three days later, as he testified, we did meet with him again. We came back with what we thought were rational answers to the three or four items that he had added, the additions.

He looked at that. There was never any acceptance by Mr. Davis of what has been referred to as a Cornell Maier-Wilson proposal. As a matter of fact, almost 2 weeks passed before the event that happened when that proposal was withdrawn—it was some 2 weeks later when Mr. Bort, who was the third and deciding vote on the board of supervisors, who indicated that he had had a change of mind and had a change of heart.

But within that period, we never received any response from Mr. Davis suggesting that, in any manner whatsoever, that that Proposal was one that was acceptable and which could bring about a settlement of the matter.

I would like to point out one other thing. I sat here and heard Mr. Davis talk about his concern for the people of Oakland, his concern for the community, the Oakland community and his deep feeling for the Oakland community.

Sir, I would like to suggest to you, to represent to you that when we discussed the proposals with Mr. Davis, although it was going to cost not $8 million but more than $10 million to make the modifications and to add the 120 fancy seats that he wanted added that at no time was Mr. Davis willing to give us a lease which would allow us to amortize the cost of those additional boxes.

Mr. Davis, at first, would only go on a 5-year lease. At one time it was suggested perhaps he might extend it to 10 years, but that would, in no way, allow us to give Mr. Davis the money that he wanted and at the same time allow us to amortize those seats which meant, then, that after 10 years, if Mr. Davis then took his team and left, that the people of the city of Oakland and the county of Alameda would have had to pay out their respective general funds for the building of those luxury boxes and luxury suites which were so dear to Mr. Davis' heart.

One final point, sir, and you have been very patient, and I want to thank you for your patience and I know it has been a long day. But Mr. Davis makes a big thing of his ability to compete and that his need for the additional money that he would make out of Los Angeles was based upon his ability to compete.

Well, the record is clear that Mr. Davis has been competing and has been competing very well, and I think it is clear that if you look around at the major sports franchises, let us look at, for instance, the Yankees of the millions and millions of dollars that have been poured into the purchase of players, and the Yankees are 15 games out.

Money was poured into Houston, and Houston could not make it. California got into one divisional playoff and that was all in spite of the millions of dollars that are spent there.

So basically that is not a criteria necessarily in terms of whether or not the team could compete.

In closing I simply again want to thank you for your patience and for the opportunity to have testified before you here today.

Senator HEFLIN. Thank you, sir.

There are problems about presiding officers, and I am going to have to leave so I understand we will recess this hearing until 10 o'clock on Wednesday morning. I hope that that does not cause any inconvenience, but I do not know of any other alternative that we can do right now.

Thank you very much.

[Whereupon, at 5:04 p.m., the committee adjourned to reconvene at 10, September 22, 1982.]

[The prepared statement of Mayor Wilson follows:]

PREPARED STATEMENT OF MAYOR LIONEL WILSON

Mr. Chairman, thank you for giving me the opportunity to testify on a matter that is crucial to the future of both Oakland and other sports communities. At the outset, let me say that I strongly endorse S. 2784, the Major League Sports Community Protection Act, and urge its speedy passage. This bill, if enacted, would protect the interests of sports fans. sports communities, and professional athletes.

Mr. Chairman, I first want to put this bill in perspective. Some will have you believe that the abandonment of sports communities by owners and stability and geographic balance in team location is not the government's business. I am told that sports leagues should be able to operate as the partnerships they are. I agree. I am here today to ask you to pass this bill to end the federal judicial interference that has permitted the Oakland Raiders to abandon my community and will, if allowed to stand, lead to instability and chaos throughout professional football.

Contrary to some suggestions I have heard, this is a fully appropriate matter for congressional concern and action. There are important public and community interests at stake. They are interests that have been callously and, I submit, indefensibly ignored in a Los Angeles courtroom. They are interests that cannot be vindicated and will not be protected unless this Congress acts. One hundred sixty members of the House of Representatives and over twenty members of this body have recognized the principles that are at stake here. Both this Committee and its counterpart in the House have held extensive hearings on sports antitrust issues during this session of Congress. Those hearings have described the confusions and contradictions that plague the application of antitrust laws to professional sports and have thoroughly outlined the community and public interests that are implicated in any sports-antitrust case. It is now time for the Congress to act on this accumulated knowledge by passing specific and carefully-drawn legislation to meet the problems that are so clearly apparent.

As a practicing attorney and a former judge, it has been my understanding that the antitrust laws were meant to serve the public interest and to promote consumer welfare. Yet what conceivable public interest is served by using the antitrust laws to allow the Raiders to turn their backs on Oakland and the fans who have given them such faithful support over the years? What public interest is served by leaving the city and the county with over $1.5 million in annual debt service costs ? What public or consumer interest is served by telling the NFL that the antitrust laws prevent it from continuing to have one of its most successful teams operate in Oakland? What public or consumer interest is served by telling our community that because Los Angeles has a larger population and is a better pay-TV market, Oakland must forfeit its team despite all it has given the Raiders? I think the answer is clear: none whatsoever.

As an antitrust matter, I do not understand how the Los Angeles case makes any sense. We and the NFL both contested that case because we both believe there is no cause for the Raiders to leave Oakland. At the same time, if the NFL were to have approved a Raiders' move out of Oakland, I can assure you that we would have switched sides-- and resorted to an antitrust suit against the League to keep the Raiders in Oakland. So antitrust suits would proceed no matter what happened.

In antitrust, the courts also seem to go in conflicting directions. A few years ago, a federal antitrust court in Los Angeles ruled that the National Hockey League could keep its San Francisco team from moving elsewhere. On that view of antitrust, the NFL would obviously be able to keep faith with the Oakland community by keeping the Raiders in Oakland. But in our Los Angeles case, the judge has ruled that the NFL does not have the same rights as the National Hockey League--that is, to keep the League's team located in the East Bay area. As a Mayor with community interests to serve, federal law concepts of this type make no sense to me.

Finally, let me comment on the place of trial of the recent Los Angeles antitrust suit. How is either the public interest or the cause of justice served by letting a court and jury in Los Angeles decide whether or not the NFL's own sense of responsibility to Oakland should be overridden or whether Oakland deserves to keep its team. As you may know, California law forbids disputes involving a local government body from being tried in that body's home court--precisely because local courts and juries tend to favor their own interests.

Nothing demonstrates the impropriety of trying this case in Los Angeles more than the arguments that the plaintiffs themselves made to the jury. The lawyer for the Los Angeles Coliseum scorned and ridiculed my city in his final argument. He appealed to the jury "ask yourselves, would any of you sign a thirty-five year lease to stay in Oakland . . . . A community that has the highest crime rate in the State of California? That probably has the highest unemployment in the State of California?" And in urging the jury to return a verdict in favor of the Raiders, the Los Angeles attorney told the jury that "Oakland is struggling for survival. . . . Why would Mr. Rozelle say Oakland isn't worth as much [as Los Angeles]. Because he knows, as we know, that the long-range future of that community is not filled with the sparkle and the energy and the vibrance and the vitality that we have down here."

Mr. Alioto, who sits here at my side and represented Mr. Davis throughout these proceedings, was not to be outdone. During his examination of Commissioner Rozelle, he asked him if he had "heard Oakland referred to as the murder capital of the United States?" Even after the judge ruled this improper, Mr. Alioto continued to press the point, planting in the minds of six Southern California jurors the notion that Oakland is simply not safe for decent people.

It used to be that people could get away with repeating Gertrude Stein's inaccurate statement that with Oakland, there is no there there. She was wrong. A dynamic port is there. A space-age transportation system is there. Major corporations such as Kaiser and Clorox, as well as hundreds of hard working small businessmen, are there. And the Oakland Raiders are there. The Raiders made us a big league city, and have been a major part of the rebirth of our city. The Coliseum sports complex and the airport development that accompanied it are showpieces of our community. In a very real sense, they were built because of the Raiders. And we have not given up fighting to get the Raiders back. My citizens and I consider them to be on an extended road trip, and with the help of Congress, we fully expect to cheer them again in the Oakland-Alameda County Coliseum that was built for them.

We're not the only ones who feel that way. The New York Times recently observed that even many people in the L.A. area do not believe the Raiders are in L.A. to stay. How could they? It takes time for a team to become part of a community. It takes the fulfillment of commitments through the years by the team and the community for that bond to develop. Oakland clearly made the commitment to the Raiders. During the early 1960s, the Raiders were a struggling member of the young American Football League. At that time, a few dedicated citizens of Oakland weathered tremendous financial losses to make major league professional football a reality in Oakland. And even as the Raiders struggled, both on the field and at the gate, AFL Commissioner Joe Foss repeatedly came to Oakland to develop support for the team, promising that if the Raiders were well supported, the team would remain in Oakland.

At Commissioner Foss' side when he made those statements was the new head coach of the Raiders, Al Davis, who spoke of Oakland in these terms:

> "I had to be convinced, as strongly as possible, that the club will remain in Oakalnd and will play in a new coliseum. Mr. Valley and Mr. McGah have shown a lot of stamina for three years and they convinced me we have a home in Oakland that is going to be permanent, a place where the Raiders can be built into one of the powers of professional football. I have seen the fans and I have plans for that coliseum. Oakland is loaded with potential."

In reliance on statements like that, the community built--at taxpayers' expense--two stadiums, first, Frank Youell Field, and then the Oakland Coliseum. The Coliseum is a modern facility that is highly comparable to your own RFK Stadium here in Washington. Its present replacement value is approximately $65 to $70 million. Moreover, our citizens filled that stadium for twelve consecutive seasons--a record unmatched in professional sports. Oakland has surely realized its potential.

In order to maintain the Raiders in Oakland, the city has taken the extraordinary step of seeking to purchase the franchise under California's eminent domain law. We filed this action in February of 1980 and last June, the California Supreme Court ruled that the economic and social benefits derived from a professional football franchise made it an appropriate property interest for condemnation under state law. We expect to proceed with a full trial in this action in the very near future and we are fully confident that it will result in the Raiders eventual return to Oakland.

Why did we take this step? First, we were forced to by the early realization that the interests of Oakland and Alameda County would not receive fair consideration in Los Angeles. Second, we did it because the Raiders have been an important part of the soul of our community. As in other sports communities, our team has been a unifying force, a point of pride, and a symbol of the spirit of a community that is working overtime to realize its full potential. Finally, the Raiders are an important part of our local economy. A transfer to Los Angeles would cost our city thousands of jobs and some $180 million in economic benefits. That is simply too much to lose.

I would make two other points with respect to the eminent domain action. First, it should not be necessary for Oakland or other communities to go to such lengths to keep their local teams. Eminent domain suits are lengthy and expensive proceedings. S. 2784 provides the same protection at far less cost.

Second, I am shocked that Mr. Davis can come before you and condemn S. 2784 and S. 2821 as "retroactive" legislation when he shows so little regard for the decisions of our courts. Mr. Davis has not told you that he is actively engaged in an attempt to have the California Legislature overturn the decision of our state Supreme Court and to do so on a retroactive basis. So I do not know why the Congress should be so concerned with protecting judgments that are favorable to Mr. Davis since he has no qualms whatsoever about seeking legislative reversals of those which are adverse to him.

The opposition to this bill, such as it is, reminds me of a story Mark Twain liked to tell about a frog farm. This frog farm was making so much noise and keeping people awake at night that a neighbor decided to buy it. Well, when he bought the frog farm he found out only two frogs were making all the noise. The same is true here. There are really only two individuals complaining loudly about S. 2784: Ed Garvey and Al Davis.

I believe Mr. Garvey's opposition is purely a part of his effort to increase the pressure on the League as he negotiates a new players contract with the NFL Management Council. I hope Congress won't allow him to hold sports communities hostage to his ambitions. For Mr. Garvey knows what everyone else connected with this bill knows: his objections are completely without substance. The bill has no effect whatsoever on any labor-management issue. It is as simple as that. Further, despite his repeated claim to the contrary, S. 2784 would only protect a league's decision to maintain a team in its present location. It gives leagues no power to move teams at will and can only operate to benefit local fans and communities.

I would like to turn your attention to the other frog, Mr. Al Davis. The people of Oakland built Mr. Davis a stadium currently worth approximately $65-$70 million. We gave him 12 consecutive sell-out seasons. We gave him the third-highest ticket revenues in the League in 1979, the year before he announced his move. In fact, in the two years preceding his announcement he had profits averaging $1.8 million, and if he stays in Oakland he could expect profits of approximately $4 million. We offered to expand the stadium to hold 65,000 and build 100 luxury boxes. We convinced Kaiser and Clorox to put up $2 million of their own money to keep the Raiders in Oakland. In short, we gave him everything a reasonable man could want.

What did Al Davis do in return? Without informing us, Al Davis began secret negotiations with the L.A. Coliseum which we didn't learn of until negotiations on a new stadium lease broke down in January 1980. He then announced that an agreement had been reached with the L.A. Coliseum, and, contrary to an existing state court restraining order, began selling tickets in Los Angeles. For the next year and a half, as we attempted to put things back together, Mr. Davis never responded in writing and never indicated what was acceptable. He only asked for more. For example, although we offered to complete a major expansion of the stadium, he refused to sign a lease of sufficient length to allow payment of the cost of these improvements. Even Congress insisted on a long term lease in order to cover repayment when it authorized the use of RFK Stadium by the Redskins. We have renewed our commitment to the Raiders on several occasions since early 1980, offering Mr. Davis all the "deal points" he demanded, such as lower rent, stadium boxes and stadium improvements. But there is a limit as to how far we can go.

The other NFL clubs know that when the AFL put a team in Oakland it chose the city, not Al Davis. They know that in 1966, when the two leagues merged, a commitment was asked for and given to the Congress that the NFL would maintain well-supported teams in their communities. That commitment was agreed to by every team in the merged league, including the Oakland Raiders. Al Davis was then a Raiders' general partner.

Finally, Mr. Chairman, let me say how encouraged I am by the support this legislation has received from community leaders throughout the country. Dozens of mayors have endorsed this bill because they know that what happened to Oakland this year could happen to their city next year. They understand the contributions that sports teams and communities make to each other and recognize the clear interest in preserving the operations of well-supported and financially successful clubs. I am heartened by their support and deeply grateful for the efforts they have made, both on behalf of my city, but in a very real sense, on behalf of their own cities as well.

Mr. Chairman, I cannot convey to you the sense of loss and betrayal that we felt when the Raiders announced their intention to leave. But the Raiders mean too much to our community to simply let them go. We feel that we have been wronged by a calculated misuse of the antitrust laws in a partisan forum. We know of no public interest or consumer welfare principle that supports what has taken place in Los Angeles. It is within the power of this Congress to act and protect taxpayers, sports fans, and consumers across the country. Those interests are far more deserving of protection than are the individual profit interests of a single team owner. I urge this Committee promptly to endorse S. 2784, both to restore the Raiders to Oakland and to ensure that other communities across our nation will not experience similar ordeals.

PROFESSIONAL SPORTS ANTITRUST IMMUNITY

WEDNESDAY, SEPTEMBER 29, 1982

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:07 a.m., in room 2228, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman) presiding.

Present: Senator DeConcini.

Staff present: Stephen Cannon, antitrust chief counsel; Marcy Tiffany, antitrust counsel; Mary Louise Westmoreland, Ally Milder, Andy Kumholm, and Ed Baxter.

The CHAIRMAN. The committee will come to order.

Today the committee continues hearings on S. 2784 and S. 2821, professional sports antitrust legislation. Several of our witnesses today were originally scheduled to appear last week. Unavoidable events forced that hearing to be recessed early 'and we are particularly grateful that the distinguished witnesses appearing today could shift their schedules to be with us. I look forward to receiving your testimony on this complex issue.

Now, I believe the first witness that we have today is Congressman Julian Dixon of the 28th District of the State of California.

We would be very pleased to hear from you, Congressman Dixon.

STATEMENT OF HON. JULIAN C. DIXON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. DIXON. Good morning. Thank you very much for the opportunity to testify.

As you indicated, I could not be present on the last occasion, and I appreciate the committee extending additional time to allow additional testimony on the Major League Sports Community Protection Act of 1982.

I do not know that I can really add a lot to what has been said. I know that you have had a lot of witnesses, and I have a prepared statement that I would like to submit for the record.

However, I would just like to briefly summarize that statement, recognizing full well that many of the issues that I will talk about have been talked about in the past.

First of all, there has been a great deal of economic impact to particular communities that I represent, and that is a part of Los Angeles, and in particular, the complex around the Los Angeles Memorial Coliseum. That community is about 40 percent below the average income of Los Angeles County. The Los Angeles Rams moving to Orange County was a direct loss of some 1,200 jobs in that area. It is estimated, and I think on the conservative side, of about $50,000 per game in lost income to various people in and around that community; not counting the local revenue losses to the city.

Now, I direct my attention to S. 2784, in particular, because of the issue which appears to be one of retroactivity. I must honestly say that I do not think that anyone in this particular issue has clean hands. I think the Congress is long overdue in enacting legislation that spells out clear regulations for, in particular, football. I feel that the Oakland Raiders and the people of Oakland can make the same claim to economic impact that we can make.

The history of this situation is, though, that the Los Angeles Memorial Coliseum Commission and the city of Los Angeles, when the Rams moved, accepted that fact. They tried to negotiate, which I think was in good faith, to attract an expansion team to that community. When it became clear that the league was unwilling to grant an expansion franchise, at least at that time, they proceeded to do what several other communities have done, and what they had witnessed, and that is to try to attract an existing team; and finally were successful in attracting the Raiders.

It seems to me that there were a lot of legal problems involved in the Raiders coming to Los Angeles, and the team, the community, the city did the right thing. They went to court. They had two court battles over this issue, and it was finally adjudicated in favor of allowing the Raiders to move to Los Angeles.

Now comes a bill that says, notwithstanding, playing by the rules, notwithstanding what the court has said, that the Raiders would be prohibited from moving until a final adjudication. To my mind, that is not only unfair and unjust, and has some constitutional problems, but to my mind it is saying that Congress would say notwithstanding what the score of a football game is, the losing team wins.

It is clear to me that in this situation, that it is totally inequitable, and certainly not appropriate to move at this time, when a lot of money, a lot of energy has been spent to adjudicate this through the legal process, to at this point have a retroactivity clause.

In general, I am opposed to S. 2784 for other reasons. I think the expansion of antitrust exemption is much too broad, but in particular, it is the retroactivity that I think is very shameful.

With that, I do not have any other testimony to add, except to say that I know that there is a companion bill. I think that that obviously moves in the right direction, it sets out clear criteria and standards, and it puts everybody on notice as to what the rules are going to be. It appears to be silent as to retroactivity.

I would support the thrust of that bill, but certainly would not support any clause that would have it apply to acts occurring before the act.

The CHAIRMAN. Congressman Dixon, your written statement notes that you would be receptive to the Congress responding in some way to the concerns expressed by mayors across the country. You mention both the development of criteria for team movement as well as the establishment of an independent commission.

Which of these approaches would you prefer, and do you have any other suggestions?

Mr. DIXON. Coming over I asked a question of my staff, who is to pay for an independent commission. I think for that reason, that S. 2821 has a much more refined approach, and I would support that kind of approach.

I know that mayors are concerned. The mayor of Los Angeles is certainly concerned. And the 2821 approach, I think, will offer the stability to teams remaining in communities.

The CHAIRMAN. Do you think it is better for the league and the Raiders to wait this thing out, or do you think they need legislation?

Mr. DIXON. Oh, Mr. Chairman, I think that legislation is long overdue. That is the reason that we are here. I think the National Football League, up until now, has not wanted legislation. I think that any legislation that comes after the fact has always got to be suspect. I think that Congress must regulate an act in this area. It is the timeliness of retroactivity that I am stressing.

The CHAIRMAN. Thank you very much for your testimony.

Mr. DIXON. Thank you very much, Senator.

The CHAIRMAN. We are very pleased to have you with us.

[The prepared statement of Julian C. Dixon follows:]

PREPARED STATEMENT OF HON. JULIAN C. DIXON

MR. CHAIRMAN:

I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE THIS COMMITTEE ON A MATTER OF INTEREST TO LOCAL COMMUNITIES, SPORTS FANS AROUND THE COUNTRY, AND TO MY CONSTITUENTS.

I REPRESENT THE 28TH CONGRESSIONAL DISTRICT OF CALIFORNIA WHICH INCLUDES THE LOS ANGELES MEMORIAL COLISEUM COMPLEX. THE AREA SURROUNDING THE COLISEUM, IS POPULATED BY APPROXIMATELY 300,000 RESIDENTS, LARGELY WORKING CLASS, WITH AN AVERAGE INCOME MORE THAN 40% BELOW THE LOS ANGELES COUNTY AVERAGE. MORE THAN ONE FIFTH OF THE AREA'S POPULATION HAS AN INCOME BELOW THE NATIONAL POVERTY LEVEL. IT IS FOR THESE REASONS THAT I CANNOT OVER-EMPHASIZE THE ECONOMIC IMPORTANCE OF A PROFESSIONAL FOOTBALL TEAM IN THE AREA. THE TEAM'S PRESENCE CREATES BADLY NEEDED JOBS AND INCOME FOR LOCAL MERCHANTS AND OTHER INDUSTRIES OF THE AREA.

AS YOU MIGHT IMAGINE, WHEN THE RAMS VACATED THE COLISEUM IN ORDER TO MOVE TO ANAHEIM, THE IMPACT ON THE LOCAL ECONOMY WAS DEVASTATING. OVER 1,200 JOBS WERE DIRECTLY LOST, -- JOBS FOR USHERS, SECURITY STAFF, TICKET PERSONNEL, CUSTODIAL CREWS, CONCESSIONARIES, AND EMPLOYEES IN A WIDE RANGE OF OTHER POSITIONS. THE WAGES LOST TO THOSE PEOPLE TOTALLED IN THE RANGE OF $50,000 PER GAME DAY. THIS DOES NOT EVEN TAKE INTO ACCOUNT THE LOSSES TO LOCAL GAS STATIONS, HOTELS, RESTAURANTS, AND OTHER LOCAL MERCHANTS. NOR DOES IT CONSIDER THE LOSS OF LOCAL TAX REVENUES SUFFERED BY THE CITY.

DESPITE THE ECONOMIC HARDHIP CAUSED BY THE RAM'S MOVE AND DESPITE THE GRAVE DISAPPOINTMENT TO LOYAL FANS IN THE AREA, NOBODY QUESTIONED THE TEAM'S RIGHT TO MOVE. NO EFFORTS WERE MADE TO ENACT LEGISLATION TO FORCE THE RAMS TO STAY IN LOS ANGELES. WE CHOSE TO ACCEPT THE RAM'S DECISION AND SEEK A REPLACEMENT TEAM FOR THE COLISEUM. IN SEARCHING FOR A NEW TEAM THE COLISEUM COMMISSION, WHICH SPEARHEADED THE SEARCH, DID NOT WISH TO TAKE ANOTHER CITY'S TEAM. THE PREFERENCE WAS FOR AN EXPANSION TEAM. IT WAS ONLY AFTER THE NATIONAL FOOTBALL LEAGUE MADE IT CLEAR THAT THEY WOULD NOT ALLOW EXPANSION TO TAKE PLACE, THAT WE BEGAN TO APPROACH EXISTING TEAMS AND ULTIMATELY SIGNED AN AGREEMENT WITH THE RAIDERS TO MOVE FROM OAKLAND. IN RESPONSE TO THE AGREEMENT, THE LEAGUE ATTEMTPED TO INTERVENE AND BLOCK THE MOVE. AFTER ONE MISTRIAL AND A SECOND TRIAL IN A U.S. DISTRICT COURT WHICH LASTED APPROXIMATELY SIX WEEKS, A JURY DECIDED THAT THE RAIDERS HAD A LEGAL RIGHT TO RELOCATE AND THAT THE N.F.L. WAS IN VIOLATION OF ANTI-TRUST LAWS IN PREVENTING THE MOVE. I FEEL THAT ANY LEGISLATION TO RETROACTIVELY REVERSE THAT DECISION WOULD BE UNFAIR AND WOULD VERY LIKELY BE FOUND UNCONSTITUTIONAL.

ALTHOUGH THIS BILL IS OF PARTICULAR CONCERN TO MY CONSTITUENTS, MY OPPOSITION IS NOT BASED SOLELY ON LOCAL CONCERNS. THE BILL IS EXTREMELY MISLEADING IN WHAT ITS SUPPORTERS CLAIM IT WILL ACOMPLISH. IN SEEKING THIS LEGISLATION, THE N.F.L. CONTENDS THAT IT WILL USE ITS NEWLY LEGISLATED AUTHORITY TO CONTROL TEAM MOVEMENT TO PROTECT LOCAL COMMUNITIES. I SERIOUSLY QUESTION THIS CONTENTION. THE LEAGUE'S PAST PRACTICES INDICATE A WILLINGNESS TO ALLOW

TEAMS TO RE-LOCATE, EVEN THOUGH MANY OF THESE MOVES WERE A SOURCE OF GRAVE ECONOMIC HARDSHIP TO THE COMMUNITIES THEY REPRESENT. WHEN THE GIANTS LEFT YANKEE STADIUM, THE LEAGUE DID NOT SHOW GREAT CONCERN FOR THE FACT THAT NEW YORK CITY HAD JUST SPENT $100 MILLION TO REBUILD YANKEE STADIUM TO MAKE THE FACILITY MORE ACCOMODATING TO THE TEAM'S NEEDS. NOR DID THE N.F.L. SHOW ANY GREAT COMPASSION WHEN THE RAMS LEFT LOS ANGELES, CREATING, AS I HAVE ALREADY INDICATED, ECONOMIC HARDSHIP TO THE AREA. SIMILAR ECONOMIC HARDSHIPS, TO CITE JUST A FEW MORE EXAMPLES. WERE EXPERIENCED BY THE CITIES OF DETROIT, BUFFALO AND DALLAS, WHEN THEIR TEAMS MOVED TO SUBURBAN LOCATIONS. COMMISSIONER ROZELLE HAS ATTEMPTED TO DOWNPLAY THE IMPORTANCE OF THESE MOVES BY CREATING THE IMPRESSION THAT THEY WERE MERELY SHIFTS WITHIN A METROPOLITAN AREA WHICH WOULD HAVE LITTLE ECONOMIC IMPACT ON THE LOCAL COMMUNITIES THEY WERE LEAVING. THIS IS FAR FROM THE TRUTH. IN TERMS OF LOST JOBS, LOST REVENUES, LOST BUSINESS, AND LOST MORALE TO LOCAL FANS, THE IMPACT OF THE TEAMS LEAVING WAS JUST AS SEVERE AS IF THEY HAD MOVED TO A CITY 1,000 MILES AWAY. THE N.F.L. HAS BEEN A RUBBER STAMP FOR OWNER INTERESTS -- NOT A DEFENDER OF COMMUNITY NEEDS.

YOU HAVE HEARD FROM SEVERAL DISTINGUISHED MAYORS THAT THEY NEED ASSURANCES OF TEAM STABILITY BEFORE THEY CAN INVEST IN NEW STADIUMS OR IMPROVE EXISTING FACILITIES. I SINCERELY APPRECIATE THESE CONCERNS. WHILE I DO NOT FEEL THAT THESE ASSURANCES WOULD BE ADEQUATELY PROVIDED BY MERELY GRANTING THE N.F.L. ANTI-TRUST IMMUNITIES WHICH ALLOW THEM TO PREVENT TEAMS FROM MOVING, I BELIEVE THAT THERE ARE OTHER WAYS OF RESPONDING TO THE LEGITIMATE CONCERNS OF THE MAYORS.

SENATOR SPECTER'S BILL, WHICH ESTABLISHES STANDARD CRITERIA FOR WHEN A TEAM IS JUSTIFIED IN SEEKING TO RE-LOCATE, IS MORE CONSISTENT WITH THE KIND OF APPROACH I WOULD SUPPORT. AN INDEPENDENT COMMISSION TO RULE ON RE-LOCATION IS ANOTHER ALTERNATIVE WHICH MERITS FURTHER CONSIDERATION. THERE IS NO QUESTION IN MY MIND THAT SOLUTIONS CAN BE DEVELOPED TO RECTIFY THE PROBLEM OF INSTABILITY OF PROFESSIONAL SPORT TEAMS.

IN CONCLUSION, I ASK THIS COMMITTEE TO CONSIDER WHO THE DECONCINI BILL REALLY PROTECTS, THE NEEDS OF LOCAL COMMUNITIES OR THE INTERESTS OF THE NATIONAL FOOTBALL LEAGUE.

THANK YOU.

The CHAIRMAN. Our next witness was Lee Peltzman on behalf of David J. Stern, executive vice president, National Basketball Association.

I believe you want to put a statement in the record for Mr. Stern?

STATEMENT OF LEE PELTZMAN, ESQ., ON BEHALF OF DAVID J. STERN, EXECUTIVE VICE PRESIDENT, NATIONAL BASKETBALL ASSOCIATION

Mr. PELTZMAN. As you stated, my name is Lee Peltzman.

The CHAIRMAN. Do you want to just turn it over, to put it in the record, or did you want to deliver it?

Mr. PELTZMAN. No, it would be fine to turn it over, place it into the record, and I just want to state that the NBA would be prepared to answer any questions in writing by this committee.

The CHAIRMAN. Well, just turn it over to the reporter here, and it will be placed in the record, and available to all the Senators.

As I understand, you are not prepared to answer questions on this subject?

Mr. PELTZMAN. No, sir.

The CHAIRMAN. OK.

We are glad to have you with us.

Mr. PELTZMAN. Thank you.

[The prepared statement of David J. Stern, executive vice president, National Basketball Association, follows:]

PREPARED STATEMENT OF DAVID J. STERN, EXECUTIVE VICE PRESIDENT, NATIONAL BASKETBALL ASSOCIATION

Mr. Chairman: On behalf of the National Basketball Association and its member teams, I thank you for inviting us to present our views with respect to S. 2784, the "Major League Sports Community Protection Act," which we urge Congress to enact.

This Committee has received testimony in support of S. 2784 from, among others, cities and sports leagues. That testimony has set forth at length the importance of sports franchises to municipalities and the uncertainty, by virtue of the Oakland Raider litigation, that now attaches to any attempt by a professional league to consider the needs of a team's current home city in assessing the issue of whether a team should be permitted to move.

The NBA endorses and embraces such prior testimony, and will not unduly burden this Committee and the congressional record by repeating what we believe are the overwhelming public interest arguments in support of S. 2784. Instead, I would share with you the NBA's approach to franchise movement and a specific example demonstrating the great difficulty and uncertainty that has been created for sports leagues and cities by the aftermath of the Oakland Raider decision.

As a matter of current NBA practice, when a request is received for the relocation of a franchise, an analysis is undertaken to determine whether the current city of operation will be unfairly impacted by the move of the team. This analysis consists essentially of two components. First, the ownership of the franchise must demonstrate that, despite the investment of adequate funds to run the franchise, substantial losses have been incurred, and the financial situation is unlikely to improve. Second, we have made an effort to determine whether there is any interest among potential local investors to purchase the team in order to keep it at its present location and possibly turn its financial situation around. Recently, the approval of the transfer of our New Orleans franchise to Salt Lake City was withheld for several months while negotiations with a prospective investor identified by the League were conducted, in an effort to retain the franchise for the City of New Orleans.

Prior to the *Oakland Raider* decision, we thought that our approach was clearly within the guidelines set down in the *San Francisco Seals* litigation, about which Mr. Stein, Vice President of the National Hockey League, testified last week. We were considering all aspects of the issue of where NBA franchises should be located, including recognition of the special relationships that sport franchisees enjoy with their home cities.

Last June, however, following the *Oakland Raider* decision, we were faced with the following situation:

1. Our San Diego team signed an unconditional lease with the Los Angeles Coliseum Commission, to play its future games at the Los Angeles arena operated by the Commission.

2. While the NBA was preparing to meet to consider how to deal with the proposed relocation of a franchise from San Diego to Los Angeles, lawsuits were either commenced or threatened by San Diego interests, ocntending that the franchise should not be moved by the NBA.

3. Counsel for the Los Angeles Coliseum Commission, who was also retained, *at Coliseum Commission expense*, to represent our San Diego franchise, advised the NBA and its teams that (a) under the precedent of the *Oakland Raider* case, a sports league could exercise *no control whatever* over the relocation of a franchise, (b) that the NBA and its

teams would be sued by the Coliseum Commission if we did not simply approve the move of San Diego without further consideration, and (c) in light of the resolve of the Coliseum Commission to attract our San Diego team, we should expect to incur legal fees in excess of $10,000,000 (in addition to tens of millions of dollars of antitrust liability) if we did not approve the transfer.

Despite this gun-at-the-head approach made possible by the legal aberration of the Oakland Raider case, the NBA Board of Governors concluded that as a business matter and in all fairness to all parties concerned, it would not approve such a move without adequate consideration, and appointed a Committee to study all aspects of the proposed transfer, including the impact of the move on the City of San Diego. In addition, in light of the legal uncertainties and threats, it sought, among other things, a declaratory judgment from a federal court as to what rights the NBA possessed to consider a franchise relocation.

Nevertheless, two days later, the Los Angeles Coliseum Commission commenced an antitrust action against the NBA in Los Angeles federal court, seeking damages of $120,000,000, because the NBA had voted to study the application to move, rather than approve it without any consideration.

After the commencement of the litigation, both the federal court in San Diego and the federal court in Los Angeles concluded that the appropriate forum for the litigation was in San Diego, which is the city in which the NBA meeting had occurred and the NBA had sought its declaratory judgment. Last week, the Coliseum Commission, having lost the "home court" advantage, about which so much has been written and said in connection with the conduct of the trial in the Oakland Raider case, notified the NBA that it was withdrawing its lawsuit. However, the NBA does not view this development as any real "victory," since our decision even to consider the relocation of the San Diego franchise will have cost us several hundred thousand dollars in legal fees and related costs, and the spectre of future litigation -- either by the Coliseum Commission or some other franchise owner, arena owner or municipality -- haunts the NBA as well as other professional sports leagues.

I submit to you that the antitrust laws are not intended to create such mischief; the federal judiciary should not be degraded by being utilized as a weapon to preclude bona fide consideration of the impact of franchise transfers; and the rights and interests of cities and fans who demonstrate support for professional sports teams should not be so lightly disregarded. Senate S. 2784 will remove the chaos into which sports leagues and cities have now been plunged, and will eliminate the misuse of the antitrust laws and federal judiciary. Accordingly, the NBA strongly urges its passage and thanks you for having been afforded the opportunity to present its views.

The CHAIRMAN. Our next witness is Mr. Donald M. Fehr, general counsel, Major League Baseball Players Association.

Mr. Fehr, glad to hear from you. Do you have a written statement?

STATEMENT OF DONALD M. FEHR, GENERAL COUNSEL, MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION

Mr. FEHR. Yes, Mr. Chairman, I have previously provided the committee with copies of my written statement, and I would ask that that be included in the record.

The CHAIRMAN. Now, would it be all right for you to put your entire statement in the record, and then you take 4 or 5 minutes to summarize it?

Mr. FEHR. Yes, sir, that was my intention, Mr. Chairman. It should not take that long.

The CHAIRMAN. Without objection, it will be done.

Mr. FEHR. Thank you, Mr. Chairman.

First, let me express gratitude of the Players Association for being afforded the opportunity to appear here and testify.

We think the issues raised in the bills before the committee are important and deserve very serious consideration.

In baseball, unfortunately, we have had long experience with what it means to give antitrust immunities to the people who own professional sports franchises. Baseball has had one on an unrestricted basis since the Federal baseball case in 1922.

What that has done is to allow baseball owners to operate that industry as an absolute cartel. It is the only industry in the country that we know of that is both free from antitrust restriction and also free from any form of Government regulation.

What does a cartel do? Well, in the sports industry, be it baseball, or others, baseball is a good example, it does, in essence, three things, and possibly a fourth. It divides the geographic market to prevent competition there. It divides the broadcast market to prevent competition there. It divides the player market to prevent competition there, and in the case of baseball, by virtue of interlocking agreements with all major league and minor league teams, it effectively controls access to the industry, because it controls all stadiums, and substantially all cities in the country.

Well, who is that benefiting? In our view, it has benefited only baseball owners.

In 1972, in the *Flood* decision; 1976, in the report of the Sisk committee before the House, and just last summer the Department of Justice, have all called for the removal of baseball's antitrust exemption as an anachronism that should be eliminated, an aberration.

If any antitrust legislation in the sports area is to be considered, we would propose that that should be the direction that the Congress should go.

In any event, we do not believe the Congress should be compounding the error made in baseball by extending it to other sports.

Now, the history of the other sports has been the following: They tried unsuccessfully, through litigation, to achieve the same privileged antitrust status baseball has. The courts, recognizing the error, refused to extend *Federal Baseball* to any other sports league. So what happened? Well, they went to the Congress for relief, and they had much more success there.

So, just consider, Mr. Chairman, the effect of the AFL–NFL mergers approved by the Congress in 1966. At a stroke, competition between NFL and AFL leagues for franchise locations was ended, for television was ended, and for players was ended. The NFL not only wants to be considered a single entity, it basically wants to be the only entity there is.

Since this legislation all arose out of matters relating to franchise location and relocation, we would ask the committee to consider whether there would have been the same limited number of professional sports franchises operating throughout the country, if in the period 1966 through today, two strong successful leagues, the AFL and the NFL, had been competing with one another for those locations. In our view, cities which now go begging to the NFL for franchises, would have long since have had them.

We oppose S. 2784. We do it for two reasons.

First, we do not believe it is appropriate or warranted to extend special antitrust status to businessmen merely because they happen to be in the business of professional sports.

Second, the bill would not achieve what it is expressly designed to achieve; that is, stability in location of franchises.

The antitrust laws prohibit only anticompetitive behavior. What the DeConcini bill would do, S. 2784, would be to immunize from antitrust attack all behavior relating to the relocation of a franchise, regardless of motivation, and regardless of what anticompetitive proof might be produced at trial.

Second, it would have the same effect with revenue-sharing.

Now, it is entirely appropriate under the antitrust laws for reasonable rules, not anticompetitive in purpose or effect, restricting franchise and relocation to be adopted by the league. There is at least one decision in which an attempted move by the San Francisco Seals hockey team to Vancouver, in which the league did not approve, was sustained by the Central District of California.

I would suggest that if the NFL wanted to adopt reasonable rules, they would not have had the problem without the Oakland move to Los Angeles in the first place.

But in any event, what is crystal clear from baseball's example, which has operated free from antitrust restriction all of these years, is that with very rare exceptions, teams do not move, or attempt to move, over the objection of the league. Quite the opposite takes place. Teams move with the consent of the league, and with the blessing of the league.

Just briefly, look at baseball's example. Baseball, in recent history, with the consent of the league, has moved the Washington Senators to Minnesota, denying the Nation's capital a team. Several years later they moved the Washington Senators' expansion franchise to Texas, denying a team again.

The Dodgers moved to Los Angeles. The Giants to San Francisco, the Philadelphia Athletics moved to Kansas City, did not like that, so they picked up and moved to Oakland. The Boston Braves moved to Milwaukee and then to Atlanta. The initial Seattle team moved to Milwaukee. The final one, St. Louis to Baltimore.

The point is not that any one or more of these particular moves was unwarranted, or that considerations did not dictate them. But there was no scrutiny of whether or not there was a need to move at any time. But more important, the league said OK.

Now, under S. 2784 and its House counterpart, what the owners seek is not a real restriction on movement of franchises. Quite the opposite. They seek congressional immunity for an attack which might be made on the league ownership to prevent the movement of a franchise.

I think that is amply demonstrated by the differing positions that the league takes with respect to the Raiders and the Rams. The owners are not interested in any legislation which would attempt to take issue with the unilateral right of the Los Angeles Rams to leave Los Angeles and move to Anaheim. Nor is the league interested in any legislation such as is pending in the House, introduced by Congressman Seiberling, which would limit the league's unfettered right to decide there can only be one team in the greater Los Angeles area.

In other words, according to the NFL, the Rams can move to Anaheim, and until the NFL gets good and ready, nobody else can move into Los Angeles.

Second, what this bill would do, certainly would be to prevent the Raiders' move to Los Angeles, absent constitutional problems.

But, consider, Mr. Chairman, that this bill is only directed at decisions not to move. If next year, Al Davis mends his political fences with the other NFL owners, and convinces a majority of them, on whatever basis, that the move is really appropriate, and he should go to Los Angeles, the Raiders will move to Los Angeles. This bill will not protect it at all.

The point is that if the NFL owners want public policy considerations as to where a franchise should be located not decided by the Congress in legislation, and not decided by the courts in interpreting and enforcing antitrust laws, but by themselves, whenever and however they want.

In our view, the public policy of the United States ought not to be decided in an NFL owners meeting. It ought to be decided here, or in the Federal courts.

With respect to S. 2821, in our view, if the Congress concurs with the findings which are stated in the beginning of that bill, and if the Congress wishes to discourage movement of franchises in circumstances in which it believes that move not to be warranted, you have to legislate it. Our view that the owners are not interested in any real restriction of their unfettered rights to move a franchise is borne out by the fact that they are not interested in that bill.

So we would urge that if the Congress concurs in those findings, that the approach taken by Senator Specter's bill be given the most serious consideration. We are not prepared to say that the specific provisions, conditions in that bill ought to be the ones that have to be met, but we believe that the general approach has merit.

We would note that Congressman Stark and Congressman Edwards, both of whom are sponsors in the House on the House counterpart of S. 2784, also introduced H.R. 823 during this session of the Congress, which in some respects parallels the approach taken by Senator Specter.

Perhaps, Mr. Chairman, that kind of regulatory effort by the Congress would be an appropriate counterpart to the antitrust immunities that the leagues have historically enjoyed.

Finally, just a couple of words about revenue-sharing, and I will conclude.

We oppose the granting to professional sports leaguers carte blanche authority to share revenues in any manner that they determine, regardless of the anticompetitive purpose or effect, that any particular revenue-sharing proposal might have.

It is important to remember that the NFL and the other people supporting this bill do not say that a given revenue-sharing formula ought to be immunized. What they say is any revenue-sharing formula adopted for any purpose ought to be immunized. We do not think so.

If the revenue-sharing plan cannot meet the standard of reasonableness, under the antitrust laws, it ought not to be allowed to stand.

Finally, Mr. Chairman, it has been suggested that athletes really have no interest in the revenue-sharing bill, and we would take strong issue with that. Because, contrary to the assertions made in support of S. 2874, in our view, that bill would have significant anticompetitive effects on players, and that can be illustrated by a very simple example.

When a player has to sell his services, the more unique and talented those services are, theoretically the more valuable they are to someone wishing to employ him. The NFL owners could pass a revenue-sharing measure tomorrow, which provided that all revenues, from whatever source would be shared equally, which is entirely proper under the DeConcini bill. At that point there would be absolutely no incentive for any professional sports team to hire an athlete, because they will share the benefits of his labors to the same percentage, one twenty-eighth, whether he plays in Los Angeles or Buffalo, or Washington, or where he does.

In other words, absolute revenue-sharing destroys the athlete's ability to argue to his team that he can, by playing there, be financially beneficial for that team. That would be a terrible anticompetitive effect on the players.

Finally, Mr. Chairman, during testimony by Mr. Davis on September 20, he argued that revenue-sharing was appropriate because, as witnessed in baseball, the Minnesota Twins and the Oakland A's have fielded on occasion apologetic teams, as he put it one ought not to take that conclusion at face value.

In our view, based upon watching all the contract signings over the years, the Minnesota Twins have made a deliberate and concerted decision not to field a good team, and yet they charge the highest ticket prices, or among the highest in professional baseball.

Why do they do that, and how can they get away with it? We believe they can do it and they can get away with it only because they enjoy antitrust immunity. Who is there that can come into Minnesota and compete with the Minnesota Twins, and provide a better team? No one. The antitrust immunity in baseball has prevented someone from coming in. If the Minnesota Twins cannot even manage to make a profit operating as a cartel, and we think they do, but if they cannot do that, what is their reaction? They either go to the city and say, give me more concessions to subsidize my bad management, or I will pack up and leave this city, the way the Griffiths took the Washington Senators to Minnesota. That is the attitude which antitrust exemptions for professional sports teams fosters, and we do not believe that that attitude should be sanctioned by the Congress.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Glad to have you with us.

[The prepared statement of Donald Fehr follows:]

PREPARED STATEMENT OF DONALD M. FEHR

Mr. Chairman and Members of the Committee:

My name is Donald M. Fehr. I am the General Counsel of the Major League Baseball Players Association, a position I have held since August 1, 1977. The Players Association is the exclusive collective bargaining representative of all major league baseball players. As its General Counsel, I am involved on a day to day basis with the Association's negotiation of and administration of its collective bargaining agreements with the 26 major league baseball clubs.

I welcome the opportunity to appear here today and to present to the Committee the views of the Players Association with respect to antitrust law and policy as relates to professional sports, and particularly to address the pending bills in this area that are before the Committee. For the reasons set forth infra, the Players Association opposes granting any additional antitrust immunity to the owners of professional sports franchises, and urges that baseball's exemption from the antitrust laws, strongly criticized by the Supreme Court, Congressional Committees, and the Department of Justice, be eliminated. I will first turn briefly to baseball's exemption.

I. BASEBALL"S ANTITRUST EXEMPTION SHOULD BE ELIMINATED

Since the Supreme Court's decision in Federal Baseball[1] sixty years ago, the owners of professional baseball clubs have enjoyed a unique privilege in this country: they have been free to operate their business as a classic cartel, free from both antitrust scrutiny and government regulations. Recognizing its error, the Court has refused to extend baseball's privileged status to any other professional sport, and has specifically noted that were it to consider baseball's antitrust status for the first time, it would hold base-

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1. Federal Baseball Club v. National League, 259 US 200 (1922).

ball subject to the antitrust laws.[2] But the Court termed the matter one for the Congress to remedy, thus perpetuating its own acknowledged error. The question last came before the Supreme Court in Flood v. Kuhn, 407 US 258 (1972). The Court was clearly unanimous in its feeling that baseball's exemption should never have been granted, but once again declined, citing Congressional "inaction", to overturn its decision in Federal Baseball. However, Justice Blackmun's majority opinion found baseball's exemption to be

> " ... in a very distinct sense, an exception and an anomaly. Federal Baseball ... [has] become an aberration to baseball." (Emphasis added.)

Justice Blackmun wrote that the "illogic" of the Court's holding can only be remedied by Congress. Justice Burger, concurring, flatly stated: "... it is time the Congress acted to solve this problem."[3]

Baseball's exemption was examined in detail, in 1976, by the House Select Committee on Professional Sports (Sisk Committee). The Committee's Final Report flatly rejects baseball's owners' contention the exemption should be retained. On the contrary, the Committee concluded:

> "Based upon the information available to it, the Committee has concluded that adequate justification does not exist for baseball's special exemption from the antitrust laws and that its exemption should be removed in the context of overall sports antitrust reform."

Similarly, in testimony before the House Judiciary Committee just last year, the Department of Justice reaffirmed its view that baseball's exemption should be eliminated. Deputy Assistant Attorney General Lipsky testified on July 14, 1981 that:

> "It has been the position of the Antitrust Division for some time that baseball's exemption is an anachronism and should be eliminated."

In February of this year, Marvin J. Miller, the Executive Director of the Major League Baseball Players Association, testified before the House Judiciary Committee on the subject of professional sports and the antitrust laws, and in particular in support of that portion of HR 3287 (Sports Antitrust Reform Act) which would eliminate baseball's exemption. In his testimony, Mr. Miller expressed in detail the reasons why the Players Association believes that baseball should not be permitted to retain its privileged status, and set forth many of the anticompetitive practices that have flowed from baseball's privileged status to operate as a cartel. I have provided the Committee with Mr. Miller's prepared statement to the House Judiciary Committee, and request that Mr. Miller's statement be considered in conjunction with my testimony before this Committee.

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[2] See Radovich v. National Football League, 352 US 445 (1956).

[3] Flood v. Kuhn, 407 U.S. 258, 286. See also dissenting opinions of Justices Douglas and Marshall.

For the reasons expressed by Mr. Miller in his statement, and bearing in mind the agreement of the Supreme Court, the Sisk Committee and the Department of Justice, the Players Association urges that the Senate take action to eliminate baseball's antitrust exemption. It has been sixty years since Federal Baseball was decided. The error of Federal Baseball has long since been recognized and acknowledged. It is time that the aberration and anomaly be eliminated.

I now turn to an examination of the bills now pending before this Committee.

II. S. 2784 and S. 2821

I understand that this Committee has been advised that, with the exception of the National Football League Players Association, the various Players Associations either support, or are neutral, with respect to S. 2784 (Major League Sports Community Protection Act of 1982).[4] That is flatly wrong. As this testimony (and my letter to the Chairman of 23 August) establish, the Major League Baseball Players Association feels strongly that public policy would be ill served by the enactment of this legislation, and further submits,that this bill would not even accomplish its stated objective of retarding movement of franchises. Moreover, the National

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[4] S. 2784 does not, by its terms, apply to baseball, as Sec. 6 of the bill defines it to apply to basketball, football, hockey and soccer. However, the House counterpart to this bill, HR 6467, is not so limited.

Basketball Players Association has also advised the Committee of its opposition to this bill.[5]

The wealthy few lucky enough to own professional sports franchises neither need nor should be afforded special treatment under the antitrust laws. The antitrust laws proscribe anticompetitive business practices. Thus, to the extent that a professional sports league enacts rules respecting territorial exclusivity of franchises, location and/or relocation of franchises, and/or revenue sharing, it is free to do so as long as the practice(s) engaged in does not cross the line and become anticompetitive. But it is not logical nor appropriate for professional sports leagues to be permitted to take group action which is anticompetitive. And it is the antitrust laws, as applied to a particular fact situation, which should determine the propriety of a particular rule or practice.

It is important to remember that professional sports franchises ordinarily would compete against one another with respect to geographical location, television marketing, and for players. When a league seeks special antitrust protection, it is doing so in an effort to win Congressional sanction for anticompetitive behavior in these areas. As noted, group action which is not anticompetitive does not violate the antitrust laws in the first place.

Historically, professional sports leagues have hoped to win baseball's priviledged antitrust immunity. That effort has failed in the Courts. In the Congress, however, sports leagues have had more success.[6] As will be seen, S. 2784 is yet another attempt to move the other professional team sports closer to complete antitrust immunity. Far from protecting communities from movement of franchises, this bill merely would confirm that public policy considerations relating to territorial relocation of franchises will be made by the interested parties -- the owners -- and not by the Congress in enacting legislation, nor by the Courts in interpreting and enforcing that legislation.

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[5] See letter of Lawrence Fleischer, Esq., General Counsel of the NBPA, of 23 August 1982, to Chairman Thurmond, with copies to all Members of the Judiciary Committee.

[6] E.g., the ability to negotiate television contracts as a group, and the approval of the AFL-NFL merger in 1966.

I turn first to the franchise relocation provisions of S. 2784. The bill provides that it shall not be an antitrust violation for a professional league to enforce rules (no matter how arbitrary or anticompetitive) authorizing the league membership to prevent the relocation of a club. Thus, the argument is made that this bill will protect communities from relocation of franchises. I respectfully submit that it will do nothing of the kind. The historical record demonstrates that in the overwhelming number of instances of movement of professional sports franchises such moves are made with the consent, if not the wholehearted approval, of the league involved. Thus, at most (see below), this bill would protect a city such as Oakland from a move by the Raiders to Los Angeles. But as most franchise relocations have the league's blessing, it certainly would not provide much community protection.

This point is well made by reviewing baseball's history of franchise movement, all accomplished with its carte blanche antitrust immunity. In each of the following instances, the movement of the franchise involved was sanctioned by Baseball: (1) Brooklyn to Los Angeles; (2) New York Giants to San Francisco; (3) Washington to Minnesota; (4) Washington (expansion franchise) to Texas; (5) Boston Braves to Milwaukee; (6) Milwaukee Braves to Atlanta; (7) Philadelphia Athletics to Kansas City; (8) Kansas City to Oakland; (9) St. Louis Browns to Baltimore; and (10) Seattle Pilots to Milwaukee. Most franchises move, as these did, with the consent of the league involved. Thus, with the possible exception of the move of the Oakland Raiders to Los Angeles, it is doubtful that S. 2784 would protect communities from the loss of franchises. Communities need protection from the league in which a franchise operates far more often than from an individual club owner operating against the other owners in a league.

An example of the skant effect this bill would have in retarding franchise movement can be seen by only examining the Raiders situation. Consider the following. Under this bill, the NFL's current decision not to permit the team to move to Los Angeles will stand. But the owners of the NFL teams certainly do not suggest that the Congress enact legislation that would have required the Rams, certainly a well supported franchise, to remain in Los Angeles. Nor does the bill prevent or inhibit the NFL from deciding, next year, for example, that its decision to prevent the Raiders from moving was ill considered, and grant approval for the relocation. Thus, a year or two from now, if Mr. Davis can mend his fences with other NFL owners, the Raiders could leave anyway.

Accordingly, if the Senate concurs in the opinion that public policy should discourage relocation of sports franchises, a bill requiring that certain preconditions be satisfied prior to a relocation is far more likely to accomplish that goal, and would do so in a manner that does not grant additional antitrust immunity to professional sports leagues. That the professional sports leagues are not interested in a bill such as S. 2821 (The Professional Football Stabilization Act of 1982) demonstrates that the NFL owners are not interested in real restrictions on their right to relocate a franchise, but only upon their unfettered group right to prevent a franchise move, when and if they decide to do so. If the Senate concurs in the findings set forth in Section 2 of S. 2821, we would urge that restrictions on movement of franchises be imposed by law, and not by the whim of the owners of a sports league.

S. 2784 also sanctions revenue sharing among franchises. Indeed, S.2784, according to Senator DeConcini's comments in introducing the bill, directly encourages such practices.[7] We oppose granting to professional sports leagues carte blanche authority to share revenue in any manner determined by the member clubs, regardless of the anti-competitive effect a given method of sharing revenue might have. As I have noted, only a revenue sharing formula which was found to be anticompetitive in purpose and/or effect is proscribed by the antitrust laws. The public policy of the United States would not be served by legislation approving anticompetitive revenue sharing.[8]

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[7] Congressional Record, July 28, 1982, at S. 9329.

[8] Clubs in professional sports leagues have been sharing revenues to one degree or another for years. Thus, it appears that the only basis upon which this bill would be helpful would be if a formula designed to have anticompetitive effects would be adopted.

Accordingly, for the reasons expressed, the Major League Baseball Players Association urges that S. 2784 not be enacted, but that serious consideration be given to S. 2821 should the Senate concur in the findings set forth in that bill.

III. CONCLUSION

In conclusion, I would like to make three essential points:

(1) For the reasons stated, the Players Association submits that there is no justification to continue baseball's antitrust exemption, and urges this Congress to act promptly to eliminate it. There must come a time when baseball's owners are subject to the law of the land, just like everyone else is subject to it. Baseball's owners should no longer be permitted to operate as a cartel.

(2) The carrot and stick approach utilized by the NFL in seeking approval of S. 2784 (and the other draft bills that circulated earlier this year) is disturbing. Evidently, the NFL's position is that expansion of the league is under consideration, but that no expansion will take place unless and until the legislation it seeks is enacted. This stance is all the more amazing in view of the fact that the NFL has regularly expanded throughout the years since the AFL-NFL merger, but now asserts it can never again do so unless given privileged antitrust status. This attitude is the product of the virtual monopoly the NFL currently enjoys.

With the AFL-NFL merger, at a stroke, competition between clubs, and between leagues, with respect to territorial location, players, and television was eliminated. Now, if a city wants an NFL team, the league insists, in effect, that the city come to it bearing gifts, so that it can choose which gift giver(s) to reward. Thus, what the NFL owners want is to insure that cities continue to compete against one another for franchises, but that in no event can two clubs ever compete with one another for a city! Consider what would happen if there were two (or more) professional football leagues competing against each other to play in Indianapolis[9]. Perhaps the city would be able to secure the best arrangement for itself and its residents, rather than having to continually better the offer of another city for the same expansion franchise.

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[9] Or Memphis, Jacksonville, Phoenix, Birmingham, Los Angeles, for example.

The owners of professional sports franchises neither need nor should be afforded privileged antitrust status.

(3) If the public interest would be served by restricting territorial movement of franchises, that restriction should be accomplished as a matter of law. The NFL and other team owners should not be permitted to determine the public policy of this country in an owners' meeting.

Respectfully Submitted,

Donald M Fehr

DONALD M. FEHR, General
Counsel, Major League Baseball
Players Association
20 September 1982

The **Chairman**. The proponents of S. 2784 argue that it protects communities from unreasonable franchise movements, because it preserves the right of communities to challenge, under the antitrust laws, league decisions to allow a team to move.

Do you think a community could succesfully challenge a league decision to move a team?

Mr. **Fehr**. I do not know whether it could or not. It would depend on the circumstances involved, the reasons behind, and the particular rules in effect, which approved the movement.

I know of no instance in which any successful antitrust challenge to the proposed move of a team has ever been attempted, much less succeeded.

The **Chairman**. Of course, a team has an obligation to fulfill its contract with the city, and I understand the Raiders had a contract with the city of Oakland, but that they did live up to their agreement and stayed for the period provided in the contract. But then the claim is that they violated the league rules in moving without actual consent of the league.

I just wondered if you felt that the community can successfully challenge the league decision to move a team?

Mr. **Fehr**. I think it is possible. I think it is extraordinarily doubtful.

What you would have, Mr. Chairman, is all of the resources of the league mobilized against a municipality, at least in the Raiders' instance they had one of the league teams, the Oakland Raiders, willing to help the municipality, willing to be on its side in connection with litigation in Los Angeles. You would not have that.

And, Mr. Chairman, I would further suggest that given the NFL's record, in the event that a successful antitrust suit was brought, challenging the right of a league to move a team, the first thing that would happen, they would be before the Congress, asking for antitrust immunity on that.

It seems to be what they do every time, there.

The **Chairman**. If the Congress decides to establish specific conditions which must be met before a team could be relocated, who do you think should have the responsibility of determining whether those conditions are met?

Mr. **Fehr**. I have, and this is a personal statement, not on behalf of the association, because it has never been considered, but I have great confidence in the Federal courts, I have great confidence in the ability of those judges to properly, upon the evidence presented, to determine if the statutory precondition is satisfied.

The **Chairman**. In other words, you do not recommend that a commission be set up, but that the courts decide it?

Mr. **Fehr**. I see no reason for a commission to be set up. I am not indicating that we would necessarily be opposed to establishing one.

The **Chairman**. Now, while you oppose the revenue sharing provisions of S. 2874, would you support a bill which laid out specific limitations on that practice?

Mr. **Fehr**. If the limitations were that no revenue sharing practice could be sustained, which it could be shown had an anticompetitive effect on the ability of the people to deal with the leagues, then I would see nothing wrong with it. I wonder if that is not a very difficult standard to meet.

The CHAIRMAN. That is a 5-minute bell. I am going to have to go. I have one more question here for you. You can answer that for the record.

Baseball has had an antitrust exemption for approximately 60 years. What do you feel has been the overall effect of this exemption on the players you represent?

Mr. FEHR. The overall effect has been, in our view, very, very bad. Minor league players operate to this day under very, very poor terms and conditions in employment. And but for the fact that in 1975 we were able to achieve, through an arbitration award, some measure of free agency, major league players would be operating under the same conditions today.

If at some later time the Major League Baseball Players Association is not as strong as it is now, the possibility exists that those conditions would revert to pre-1975 conditions.

[Short recess.]

STATEMENT OF HON. DENNIS DeCONCINI, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator DECONCINI [presiding]. The Judiciary Committee will come to order.

We will continue with the fourth and fifth witnesses in just a moment.

In the meantime, Mr. Chairman, today is the last day of hearings on my bill, S. 2784, and on Senator Specter's bill, S. 2821. I look forward to hearing some of the witnesses today, and have enjoyed the testimony thus far.

I believe the hearings have been very useful in clarifying the issues, and determining the impact of the two bills. However, I am still concerned that some members of this body and the press may misunderstand the effects of my bill, the DeConcini-Heflin-Simpson bill does not give the National Football League, or any league free reign to determine where teams are located. It grants a very narrow antitrust exemption that only covers decisions by professional sports leagues to keep teams where they are located.

If the decision of the league is to allow a team to move, that decision would be subject to antitrust scrutiny, and treble damages relief. This is made clear through the explicit language of the bill. This misunderstanding concerns—concerning my bill, has caused some members of this committee to ask: why leave these decisions up to the leagues? The narrowness of my bill ensures that we are not leaving anything up to the league.

We are protecting the league, and thereby sports communities, only when the league acts in the public interest by stopping an owner from abandoning his community.

Second, I believe the witnesses who have appeared to date, have called into question the NFL Players Association's objections to the bill. I do not believe I have heard one strong argument against my bill from the players. Their opposition has to be seen within the context of their current negotiations between the NFL Management Council and the Players Association on a new collective bargaining agreement.

The present strike ended in a manner that was satisfactory to the players' interests, and I believe the players' opposition to the bill would also end.

I do not believe it is absolutely necessary for us to reconcile the statements made by all of the parties to the Oakland Raiders' lawsuit, who have appeared before this committee.

I urge the committee to review the testimony of those witnesses who are not connected to the various antitrust lawsuits currently pending against the NFL. For instance, three explayers, Dick Anderson, Bill Dudley, and Rocky Bleier, appeared in support of S. 2784. Dick Anderson, the former president of NFL Players Association, who is currently a member of the Florida Senate, has nothing directly at stake in this legislation today. He is not connected to Al Davis or the National Football League.

However, he does understand what is good for professional athletes, from his experience as a professional football player, and as the head of the Players Association. He gave unconditional support for my bill.

I would like to quote from his prepared statement, where he refers to the team location provisions in S. 2784. He said:

> I believe these team location provisions are vitally important to the public, to players, to stability in professional sports. Others have commended this legislation for a wide variety of reasons, but I want to emphasize the importance of the stable team community ties from the players' perspective. Our careers as professional athletes can often be short, and we must then seek to establish new careers off the field, frequently in the communities where we have played. Our opportunities to establish such careers are inevitably reinforced by strong team community ties.

Mr. Anderson went on to state unequivocally, "This bill will have absolutely no effect on players, on player or union rights or privileges."

Third, I want to emphasize the thrust of the testimony of the other groups of objective witnesses who appeared on this legislation. I am speaking, first, of the Mayors of this Nation. We heard from the Mayors of San Francisco, Kansas City, Baltimore, Phoenix and Green Bay, and we could have heard from many others, since over 40 Mayors have endorsed this bill. They said it in different ways, but it all came down to this. Professional teams are part of the heart and soul of many communities throughout this country. A team owner does not always have the community's interest in mind when he makes a team location decision.

But a league, with the long-term interests of the sports and fan in mind, can act in the public interest, particularly when a league decides to stop an owner from abandoning a certain community. When leagues act in this way, they deserve to be protected from misguided applications of the antitrust law.

Mayor Feinstein of San Francisco summed it up by saying, and I quote from her testimony:

> In many ways our communities, which have major league sports, are threatened with a league nightmare which jeopardizes their vital interests, their taxpayers' investments and the ability of communities to obtain and enjoy the exciting sports entertainment that these public investors have postured. The Major League Sports Community Protection Act of 1982 resolves certain of these problems, and protects

critical public interest by clarifying a very narrow area of our antitrust jurisdictions.

I want to close by thanking Chairman Thurmond, and also Senator Specter and the others who have participated in the hearing process, particularly the chairman of the Judiciary Committee, for providing his own time, his staff, and of course, permitting so many witnesses on all sides of the issue to participate.

We will now finish the hearings today with Mr. John Bassett and Prof. Louis Schwartz.

Are they both here?

Would you please come forward?

Gentlemen, if you have full prepared statements, we will put them in the record, and if you would summarize them for us, please?

STATEMENTS OF A PANEL CONSISTING OF JOHN F. BASSETT OF TORONTO, CANADA, REPRESENTING THE MID-SOUTH GRIZZLIES JOINT VENTURE, MEMPHIS, TENN., ACCOMPANIED BY EDWARD RUBENSTONE, COUNSEL, AND PROF. LOUIS B. SCHWARTZ, ESQ., PROFESSOR OF LAW, UNIVERSITY OF PENNSYLVANIA LAW SCHOOL

Mr. Bassett. This is an interesting situation for me to be in, not being an American.

My name is John Bassett. I have been involved in professional sports for over 22 years, and as much as anyone can be, I suppose, without owning a professional football team, as close to the National Football League as almost anyone.

I have been an officer and director and owner of a team in the Canadian Football League and World Football League. I am currently, with two other gentlemen, a part owner of the new U.S. Football League team in Tampa Bay.

The crux, I think, of last week when we were here, with the intent to participate, but the proceedings lasted beyond the time that was allowed to us, turned out to be a very interesting day.

Senator Laxalt, I think, really put in context the feeling that I have after 22 years in professional sports, and that is the real question of whether or not the business of professional sports belongs here in the first place.

Essentially, I believe that the National Football League—I know that the National Football League—is one of the most successful businesses in the history of America. If there was not a strike this year, each of the National Football League teams would have made a gross profit in excess of 50 percent of their gross revenues.

It is my feeling that the bill which is before you, which you have sponsored, sir, essentially addresses itself to the Oakland situation. In doing so, it is my view that the Oakland situation is within the league situation, that in your United States of America, that is a question for the courts to handle, the courts have handled it, and if Mr. Davis has difficulty with his 27 other owners, it is something that they should settle.

I have owned a professional hockey team, professional tennis team, as I say, three football teams in other leagues, and I can tell you that in none of those leagues, at any time, does this kind of problem occur.

The National Football League is a very rich, a very wealthy organization, which seeks, in my view, to bring unto itself even more power than it already has. Unlike yourself, who has to go to the people, the National Football League owner is probably the only man in America who can lose every single day he goes to work, has no constituents to answer to, and yet is going to make a profit which is at most $2 million less than the man who never loses a football game.

The National Football League, in this bill, its retroactivity, will throw out a situation whereby in Memphis, when we had a professional football team, the NFL refused to allow one. Your bill is aimed at teams who would leave their community. Essentially, I am here in this particular case to defend a situation whereby our lawyers have asked me to come. We had a football team. We went to a great community, the community of Memphis, Tenn., which the National Football League had been considering. We invested in that community in excess of $4 million.

We met with the appropriate mayor of that city, at that time Mr. Chandler. The National Football League was considering Memphis at the time. We made it very clear to Mr. Chandler, in fact, we contacted the National Football League from his office, on whether or not they intended to come. I sat here last Wednesday, and listened to a majority owner, an expansion committee member of the National Football League, tell this committee facts which were totally and completely untrue, relative to the World Football League in Memphis.

Nothing would make me happier than to see the National Football League expand in Memphis, Tenn., to Birmingham, Ala., to Indianapolis, Ind.; to Phoenix, Ariz.; to Hawaii, to San Antonio.

Senator, there are 12 to 16 cities in this community, in this country of yours, that within 1 month's time would pay in excess of $30 million to participate in the National Football League. So I do not sense in any way that your bill, which would stop a team from leaving, is of any real need at all.

In fact, it probably should be the other way around. It should be an expansion bill, to encourage great American communities to have teams in the NFL. There should be a team in Memphis.

When we were there, we put together a football team, and we hired a first class coach, who went on to coach the New York Giants, is now with the San Francisco Forty-Niners, who are the Super Bowl champions. We had a quarterback from Arizona State, who is now the starting quarterback of the Dallas Cowboys. Our backfield was composed of Larry Csonka and Jim Kiick, Paul Warfield, who we were proud to have as our wide receiver. We played 20 games in Memphis, Tenn., in 1973; our smallest crowd was in excess of 20,000 people. We won 17 and lost 3.

The next year when the league folded, we were in first place, and we were probably the only team, maybe the only business in the history of Tennessee, that by its partners, around the league, were forced to go out of business. And yet we were given the honor in Memphis of the leading citizens of the year. We kept our team intact, with the help of the mayor, of the six Senators from Tennessee, Arkansas, and Mississippi, and the Congressmen from that area, Phyllis George and Tim Ryan of NBC. We were able to sell 46,000 season tickets. We raised $10 million, and applied to the National Football League. We applied to the National Football League on the basis of their own bylaws. That application was never considered.

Over a period of 8 months, even with the full support of three States in that area, our application was never even considered. To this day, we have not been told in any sense whatsoever why the city of Memphis, Tenn., does not have a football team in the National Football League.

I would suggest to you, sir, that the National Football League is a business, I guess the—almost without parallel of success, and that maybe the biggest thing I have, or should have, or any of us should have against the National Football League owners, is that we are not one of them. It is an absolute, it is the smallest and richest club in North America. It has arrangements at this point in time with the Canadian Football League, its only competitor in terms of contracts, when and when not to lease and sign players, and how they operate. It has a lock on all three television networks.

When the World Football League began in 1974, it was unable to achieve any network coverage whatsoever, due to the lock that the NFL had on the three networks. And everybody who would appear before you, sir, would tell you that without national television, and in the future, pay and cable television, without that there is no professional sport in America at all. Because with the price of operations, administration, and athletes, it is impossible to put enough people in at a price the consumer can afford, to break a club even.

So in coming today, I essentially would like to leave the message as a professional, as a man who has been involved for 22 years, as a Canadian who has come to this country, 90 percent of whose business is now in this country. The National Football League, sir, with the greatest of respect, needs no help at all. It does not need this bill. It should run its own business. Your court system should look after it.

We have 12 new owners in the new United States Football League, and I speak as an individual owner. This bill would help me, but it is totally and completely unnecessary. If I cannot get along with the 11 owners around my table, then let the instruments which for so many years you have set up and structured, do their job.

Thank you.

[The prepared statement of John Bassett follows:]

PREPARED STATEMENT OF JOHN F. BASSETT

Mr. Chairman,
Members of the Committee:

I appear before the Committee today in two roles: as an entrepreneur with some considerable experience in the business of professional team sports; and as the representative of the plaintiffs in an antitrust lawsuit against the National Football League, Mid-South Grizzlies Joint Venture, et al. v. National Football League, et al., E.D. Pa. Civ. No. 79-4373JLM. The members of the Committee may be aware that I am a co-owner of the Tampa Bay Bandits, a franchise in the newly established United States Football League. Although I am not here as an official representative of the USFL, I will be happy to answer any questions which I can about the USFL or my participation in it. But I am really here simply as a private businessman who has had and continues to have strong interests in the ownership and operation of professional sports teams, especially a professional football team.

I recall that last March the NFL attempted to have a bill put through Congress which would have defined the League to be a "de facto" single economic entity, thus establishing for these twenty-eight businesses a blanket exemption from Section 1 of the Sherman Act. As plaintiffs in an ongoing antitrust action against the NFL, at the very core of which lies the League's concerted refusal to deal with us when we applied in late 1975 for a franchise to be located in Memphis, Tennessee, my group closely followed this attempt by the members of the NFL to gain for themselves absolute immunity from antitrust liability. As this Committee knows, that attempt met with little encouragement from Congress and the matter was withdrawn.

Now the NFL is back, appearing to march this time to the tune of a different piper. They are, they say, alarmed that the greedy and capricious Mr. Davis has abandoned his commitment to the City and fans of Oakland after much of Oakland's public loyalty and public money were spent on him. It is as the champions of this commitment, they profess, that they appear before you, this time urging the passage of a "community protection" bill.

If enacted, S.2784 would vest in this private industry group an absolute, unreviewable, subjective discretion to enforce "rules" prohibiting relocation of a franchise. No guidelines or objective, reasonable decisional criteria need be followed. Nor, under the present wording of S.2784, must the League members discourage and prevent relocation; they simply have carte blanche power to do so should they desire. By necessary implication, the League's members would also have tacit legislative approval to enforce their choice of original location of any new franchise, as well as tacit legislative approval of their arbitrary method of doling out franchises. Finally, S.2784 would give to this industry group a similar, absolute discretion to enforce "rules" coercing the redistribution of income, again without meaningful guidelines.

Of such power, vested in private hands, not even the Robber Barons of the 19th Century ever dreamt. It seems to me that what the members of the NFL seek now in the sheep's wool of "community protection" is the very wolf from which Congress recoiled last March. It seems to me that these twenty-eight owners of a multi-billion dollar industry do not represent the public interest when they appear before Congress seeking protective legislation. No less than myself, they represent only their own private business interests. They seek to advance only their own already gripping control of the professional football marketplace.

I will illustrate by referring the Committee to two instances of the NFL's past behavior. The first example is the NFL's "carrot and stick" approach to Congress in 1966 when it wanted legislation exempting from antitrust liability the merger of the NFL and AFL.

The record developed during discovery in our Mid-South Grizzlies litigation establishes that in order to facilitate the passage of the legislation they desired, the NFL promised Congress, when Pete Rozelle testified before it in 1966, that they would add two new franchises immediately, and would study the feasibility "of adding at an early date two additional franchises ... for a combined league total of 28 franchises in 27 cities". In Mr. Rozelle's 1966 congressional testimony, there was no equivocation about the timing. Indeed, Mr. Rozelle neither told nor even intimated to Congress that the NFL would delay adding the third and fourth franchises for any reason. Rather, as confirmed in the record of the hearings, and as Mr. Rozelle testified at his deposition in our Mid-South Grizzlies case, the NFL, in order to obtain favorable legislation, wanted Congress to believe that there would be no delay in adding four teams. And not only did the NFL hold out to Congress the promised carrot of a 4-team expansion, but it even threatened Congress with a stick. Mr. Rozelle testified that without the merger-exemption, some existing franchises might well fold, or have to relocate.

While the NFL did add the first two of the promised four new teams, once having obtained the legislation, they never again considered the subject of adding the second two teams until 1973, 7 years after Congress had passed the merger-exemption legislation. Our discovery in the Mid-South Grizzlies case revealed that not once in that 7 year period did the subject of expansion appear on an NFL agendum, until suddenly in 1973 it appeared without preamble.

Significantly, the evidence also showed that in 1973, the members of the NFL were in the midst of a new campaign to influence Congress. This was their effort to defeat legislation which would prohibit them from blacking out certain home games. Having left Congress in 1966 with the second half of his promised 4-team expansion unfulfilled, Mr. Rozelle understandably feared to return in 1973 seeking further protective legislation. And so, an "expansion committee" was appointed in 1973 prior to the NFL's intensive lobbying effort against the anti-blackout legislation.

The NFL defendants in our Mid-South Grizzlies litigation attempted to escape the obvious implications of this evidence by paraphrasing Mr. Rozelle's 1966 testimony. They said to the court:

> At the 1966 hearings, the NFL Commissioner also informed Congress that, after the single-league plan had become fully effective ... and after the combination had been fully digested, the League would consider bringing two additional franchises into existence.

[Emphasis supplied.] This paraphrasing of Mr. Rozelle's testimony was seriously at odds with the evidence, which clearly showed that Mr. Rozelle certainly did not tell Congress that the NFL intended to wait before considering the third and fourth expansion teams. Likewise, the evidence proved beyond honest dispute that Mr. Rozelle did not tell Congress that the NFL intended to wait until "after the combination had been fully digested" before it would consider the third and fourth expansion teams. Instead, Mr. Rozelle had made a studied effort to convince Congress that the entire 4-team expansion would be completed at an early date.

This example of the NFL's prior behavior will illlustrate the candor with which they approach not only litigants in actions against them but also the Congress itself. It will illustrate, I believe, the folly of any trust placed in them to care for community or public interests.

And it should lead this Committee to distrust Mr. Rozelle's sincerity when he tells you that the League is now ready to expand, but that the threat of antitrust litigation presents a serious obstacle, and if only Congress will exempt the League from liability, it can carry through in its desire to serve the public by expansion. I recall that it was only in 1978 that the Los Angeles Rams announced their intention to move from the L.A. Coliseum. The Coliseum sued the NFL seeking a replacement team, presumably an expansion team. Mr. Rozelle announced to the press that the League had no plans to expand in the near future, that the situation was "bleak". In 1979, the Oakland Raiders announced their intention to move to Los Angeles and later joined the Coliseum in an antitrust action against the League. Then in March 1982, and only after Judge Pregerson had flatly rejected the League's single-entity argument in the L.A. Coliseum case, Mr. Rozelle suddenly announced from Phoenix that the members of the League were "ready to expand" but would not do so unless the L.A. Coliseum verdict went their way, or unless Congress enacted protective legislation. A carrot under any under name would taste no sweeter.

My second example of the League's prior conduct comes from my own personal experience with them. I am a Canadian citizen and resident of Toronto. From 1963 to 1974, my family owned the Toronto Argonauts, a team in the Canadian Football League. From 1973 to 1979, I was also an owner and the chief executive officer of the Toronto Toros, a team in the World Hockey Association. In 1974, I decided to become involved in the World Football League; I enfranchised my club in Toronto, calling it the Toronto Northmen. But Parliment enacted two readings of a law saying that American professional football could not come to Canada in competition with the Canadian Football League, so I was forced to move the team to the United States and chose Memphis. We called the team the Memphis Southmen, and later, the Mid-South Grizzlies.

For two years we served the Memphis community well. We were the strongest of the NFL teams; we brought professional football to thousands of Memphis' people; we brought millions of dollars in revenue to the area; and we engendered in the local people a fine sense of community spirit and pride. In short, we did in Memphis, even if on a lesser scale, exactly what mr. Rozelle told you, when he testified last August 16th, that the NFL had done in Oakland.

But then in late 1975, the WFL folded. I immediately joined with John Bosacco, who owned the WFL's team in Philadelphia, and Bill Tathum, who owned the WFL's team in Portland, in an effort to carry on our enterprise in Memphis by obtaining an NFL franchise for Memphis. After all, we had a first class team and organization and there was nowhere else for us to play. We made capital contributions to the team in excess of half a million dollars. We agreed to fund all current and future obligations and financial requirements which would be imposed upon us as an NFL member. We obtained a commitment from a consortium of local banks for $10 million with which to finance the franchise. We already had 31 major league professional football players under contract, including two NFL all-pros, 8 other NFL veterans, 5 CFL veterans, and 16 WFL veterans. The NFL immediately attempted to sign many of our players, but were unable to because we defended our contracts in court. We signed a 7 man veteran coaching staff and a full administrative staff of persons having extensive experience in the management of a professional sports team. In short, we had a complete, major league professional football organization possessed of a playing-field expertise which could compete in the NFL.

We enjoyed the full backing and support of the City of Memphis. The City Council agreed to expand the municipal football stadium from 51,000 to 72,000 seats; the stadium authority gave us an extremely favorable lease for the 1976 NFL season. We solicited from the public and were given some 46,000 season ticket deposits for the 1976 season, and we received firm commitments for the purchase of all remaining seats in the stadium.

With this package, we went to the NFL in 1975 and asked to play football in Memphis. The NFL refused to consider our application. They displayed no concern for the fans and community of Memphis who had an established football team with an established local identity and wanted it to continue with their active support. Indeed, even in the face of affirmative and insistent urging from many members of the House and from the six senators from Tennessee, Arkansas and Mississippi, the NFL steadfastly refused to put a franchise in Memphis.

For this concerted refusal to deal we sued the NFL in antitrust. In defending this suit, the members of the League have advanced two basic arguments. The first was that they are in essence a single economic entity, a de facto "partnership" in the business of professional football. They argued that NFL football was their business and theirs alone, that being a "partnerhsip" they did not have to admit any new participants to the business if they didn't want to, and that they were thus immune to the reach of Section 1 of the Sherman Act. This was, of course, the same argument rejected by both Judge Pregerson in the L.A. Coliseum case and the Court of Appeals for the Second Circuit in the North American Soccer League case. And it was the same argument which Congress only last March rejected.

The second basic defense made by the NFL in our litigation was that economic circumstances and other conditions in the industry at the time made expansion to Memphis unwise. But the members of the League have steadfastly refused to disclose financial data sufficient to allow a factual determination of whether their total exclusion of the Mid-South Grizzlies from the market was reasonable and justified. Rather, they have argued that the determination rests in the subjective exercise of their discretion, in their "sound business judgment", and that they are not subject to review of that judgment.

The caprice with which the members of the NFL rendered that judgment in our case is illustrated in the discovery record. The evidence obtained to date has disclosed that no consideration whatsoever was given to the merits of The Mid-South Grizzlies' application. The League and its member clubs totally ignored every applicable procedural standard, including the very procedures established by their own constitution and bylaws, in considering and passing upon The Grizzlies' application for a franchise.

We were not merely refused prospective entry into the market, but our extant, professional football organization--completely funded, staffed, stocked with players, housed in a stadium and supported by some 46,000 fans--was forced into dissolution by the NFL's concerted refusal to deal with us.

They refused to negotiate with us on any terms of entry. They were determined to and did protect their market shares from competition by denying The Mid-South Grizzlies entry into the business of professional football. They have admitted in our lawsuit that there was nothing we could have done to persuade them otherwise. Mr. Rozelle admitted at his deposition that the only thing he could think of "is a court order. ... I can't imagine any other way."

Such complete, discretionary, self-regulatory power without review is, of course, precisely what the NFL seeks in S.2784. And of course, they seek by means of a retroactivity clause to pre-empt even a court order. As a businessman who loves the challenge, and as a fiercely competitive sportsman and entrepreneur, I believe that such power concentrated in the hands of a small private-interest group is inimical to a healthy, free enterprise system. And I thank this Committee for having given me the opportunity to say so.

20 September 1982

JOHN F. BASSETT

Senator **DeConcini**. Thank you, Mr. Bassett.

You know, I get a feeling that there is a misdirection on this bill. I do not think it is as much for the NFL as it is for the city of Phoenix or the city of Memphis, Tenn., if in fact they are granted franchises. I agree with you that the NFL should have granted a franchise to Memphis. The justification is there. I expressed to the NFL representatives that I talked to that Memphis and Phoenix should be granted franchises. That is really not the decision here.

Like many other witnesses, you seem to be reading new provisions into my bill. Your problem with the NFL concerns the expansion decision. My bill only covers decisions by leagues to keep teams where they are located, not expansion decisions. I would like you to clarify for me how you conclude that my bill gives legislative approval to the NFL method of expansion?

Mr. **Bassett**. Sir, on a technical basis, I would like Mr. Rubenstone to answer that, who is counsel.

But I would only comment, and I was—your statement at the opening of the second part of the session was excellent in that it clarified a lot of the smoke that is around this bill. I think that the perception of your bill is almost as important as the fact, and the perception of your bill throughout athletes, throughout the cities of America, and throughout the courts, is going to be that the NFL has been set up in antitrust exemptions similar to baseball and what have you.

Senator **DeConcini**. I think you raise a very good point and that is why I had an opening statement. I take the responsibility for not attempting to articulate that more clearly. I appreciate that objective criticism of the imagery of this particular legislation.

I think your lawyer or counsel, if they read the bill as I wrote it, would have to agree that it does not deal with expansion.

Mr. **Bassett**. I would like him to answer, sir.

Mr. **Rubenstone**. Senator, just very short and quickly to clarify, one of the primary reasons that Mr. Bassett and Professor Schwartz are here today is that, as a result of the attempt by Mr. Bassett and his group in 1975 to obtain a franchise in Memphis after putting together a full professional football organization, and the refusal of the NFL to consider that application, we brought a lawsuit in the Eastern District of Pennsylvania on antitrust grounds, claiming that the failure of the National Football League to apply fair and objective standards to our application and to provide due process to that application——

Senator DeConcini. That dealt with expansion.

Mr. Rubenstone. Yes, sir.

Senator DeConcini. My bill does not deal with expansion. It deals with moving.

Mr. Rubenstone. Well, perhaps, and perhaps that is a clarification that is necessary. But if I can just comment on two points.

One is a general comment, after having litigated with the National Football League for 2 years, and that is that the National Football League and its attorneys, I believe, if this legislation is enacted, will grasp upon this as an example of special treatment provided to Congress since, throughout the litigation, even going back to the 1966 merger bill, the National Football League and its attorneys in our case have consistently proclaimed to the court that the merger legislation, for example, indicates the exalted or special status which the National Football League occupies in the eyes of Congress.

Senator DeConcini. Yes. But now wait a minute. You are making some image statements as far as I am concerned.

Would this bill have prevented the bringing of the lawsuit that you brought in Pennsylvania?

Mr. Rubenstone. OK. Let me respond to that because that was my second point.

A primary concern to us is clause B in subsection 1 of the bill which provides for rules relating to revenue sharing and which essentially gives the National Football League antitrust immunity if those rules tend to promote economic comparability.

Now, the National Football League, we believe, if this legislation is enacted, will come into the courtroom in our case and will claim that the rules which they enact relating to the admission of franchises and the effect that those rules have upon the economic stability and comparability of the league members is protected by this bill and that the retroactivity provision in this bill, given this particular clause, should be used to knock out the lawsuit that has been instituted.

Senator DeConcini. What if the retroactivity provision was taken out? Would it prevent your lawsuit?

Mr. Rubenstone. Senator, no.

Senator DeConcini. OK.

The way this bill is written, it seems very clear to me that it would not affect your lawsuit, at least as I understand your lawsuit. Your lawsuit involves expansion, and if I had to choose a side, I am on your side. I wish the NFL would expand to Phoenix and Indianapolis. I do not know why in the devil they do not do it.

Mr. Rubenstone. Let me make one suggestion——

Senator DeConcini. But I have been able to set that aside to look at the protection of Memphis and Phoenix, Ariz., or wherever the NFL may expand, because I do not want to see those communities hurt as Oakland has been. I appreciate your comments.

Mr. Rubenstone. Senator, may I make one suggestion?

Senator DeConcini. Yes, sir.

Mr. Rubenstone. And perhaps you might consider this——

Senator DeConcini. Go right ahead.

Mr. Rubenstone. In the context of the bill. There is, as you are probably aware, a major lawsuit in the Southern District of New York relating to the cross-ownership rules. Now, our reading of your bill indicates that there has been a specific clause inserted which would exempt the application of the retroactivity provision to that legislation relating to predatory practices in other leagues.

Senator DeConcini. Right.

Mr. Rubenstone. We would suggest and urge the Senate to consider inserting into this legislation similar language which would specifically exempt rules relating to the admission of teams into the league and exempt such rules from the application of any antitrust exemption.

Senator DeConcini. That is a very good suggestion. Thank you. Professor Schwartz?

Mr. Schwartz. I am afraid, Senator DeConcini, you will not find my position more agreeable than the others.

Senator DeConcini. I understand what we are doing here today. We are glad to have you here anyway, Professor Schwartz, and Mr. Bassett also.

Mr. Bassett. Thank you, Senator. It is a pleasure.

Mr. Schwartz. There is a statement which I filed last week and I will ask permission to correct several typographical errors.

Senator DeConcini. Fine. Without objection, the statement will be inserted in the record and we will permit Mr. Schwartz to make the typographical corrections.

STATEMENT OF LOUIS B. SCHWARTZ

Mr. Schwartz. Thank you.

Now, the statement includes an identification but I will just say briefly that I have talked and written about antitrust laws for 30 years, taught it virtually everywhere, including Arizona State fairly recently, and that I am very much identified with the preservation of free enterprise and competition from the days when I was in the Antitrust Division of the Department of Justice.

My view is that S. 2784 gives the league unlimited discretion to regulate the business and delegates excessive power to a private trade association which is what we are dealing with. I do not view it as a community protection measure at all. If this were co unity protection, we might have before us a bill dealing with the *Boulder, Colo.,* decision, but the only protection afforded by this bill is the protection to the members of the league. It shores up league power. I am going to expand on that and try to meet some of the points that you made a moment ago, Senator, but this is the summary.

As for S. 2821, it delegates a much more limited but still wide discretion to the league and confines itself to football. I find this bill unacceptable from the point of view of general antitrust theory and experience, because the criteria for regulations which it specifies are too rigid, and when I get to elaborate this point, I will indicate the contingencies that can arise that would make S. 2821 awkward, to say the least. In addition to the rigidity of the criteria, S. 2821, far from solving the litigation problems of the league, is in many respects an invitation to litigation. There will be more and more cases and, therefore, S. 2821 is, in my view, an unsatisfactory intervention in the existing situation which can be well handled by the judiciary under the antitrust laws.

Senator, if I could prevail upon you to rewrite this bill, what I would suggest to you is that you write a bill mandating the leagues to file regulations for franchising, both initial franchising and relocation. Those regulations might lie before the Judiciary Committee and people would have an opportunity, including the cities, the players, and the fans. All interested groups would then have a shot at these regulations. This is very much like what is done with regulations published by official agencies, and all the more necessary when regulations will have been prepared in private by members of the league and with primary reference to their profit position rather than to municipal protection. That is my summary, Senator.

Now, the rest of my presentation is divided into a set of general principles and a set of specific critiques of the two bills that are under consideration.

General principle No. 1 would be that you do not send the fox to guard the chicken coop. If there are municipalities and players and fans to be protected, you do not ask the owners of the teams to do that protecting. The conflict of interests is obvious. Principle No. 1 is directly derived from centuries of antitrust tradition. Going all the way back to Adam Smith in the 18th century and the 17th century statute of monopolies, it has always been recognized, as it was in the preambles of that 17th-century statute, that cartels and monopolies put themselves forward as protectors of the public interests. Adam Smith says that you cannot rely on gentlemen of the same profession getting together and protecting the public interest. They get together secretly for reasons that would animate all of us. They are not villains, but they get together to promote their interests. So I repeat the first principle is do not send the fox to guard the chicken coop.

Second, do not proceed on the theory that the league is an entity. We have heard a great deal of that in litigation and before this committee at some point. It is not an entity. A business entity recognized as such under the antitrust laws is an organization like a corporation or partnership which shares profits, which shares the liabilities, sustains the losses, has a single economic policy. That is simply not the situation here. These are separate enterprises that compete for personnel, for finances, for remunerative concession, contracts, and the like. They do have a common front vis-a-vis the television networks. But the proper conception for such an arrangement is that of a joint venture or joint enterprise. That means these people are, of course, competitors but, for certain reasons, we are willing to allow them to collaborate in a limited area. The obvious limited area for a professional sports league is rules of play and scheduling. Now, there may be other things, but I am giving an illustration of what is meant by the proper definition of the scope of a joint enterprise and its distinction from a single business entity.

The significance of calling something an entity is, in our antitrust law, that a nonmonopolistic entity has unlimited discretion in its business policies. If you are indeed a trading individual or a trading corporation, single business enterprise, you do not have to consult anybody about where you go or do not go, what prices you make, whether your profits are excessive and the like.

I conclude, that it is extremely important to avoid the notion that there is a single entity in these professional sports leagues, because that translates into unlimited discretion. On the contrary, we must regard the league as a joint enterprise or, if you like, a trade association which sets the essential rules of the season long exhibition.

When joint enterprises are authorized, under the rule of reason, under the antitrust laws, it is invariable that safeguards are imposed. Safeguards of access to the joint enterprise, safeguards of reasonable procedures for joining, reasonable procedures for getting permission to do what you as a business individual are entitled to do.

So much for the importance of joint venture as distinguished from entity approach here.

Finally, as to general principles, I would call your attention to the long line of cases holding that stabilization is not an appropriate activity for private politically nonresponsible cartels or groups or trade associations. Right from the word go, in the *Addyston Pipe* case at the end of the 19th century, Justice Taft, who later became Chief Justice, he was judge at this time in the court of appeals, rejected such a defense. *U.S.* v. *Pipe & Steel Co.* 85 Fed. 271 (6th Cir. 1898). The people in the pipe industry had gotten together, divided markets among themselves and rigged the bidding. They claimed that this was good for the communities because unrestrained competition resulted in closing plants and in unemployment and in community hardship. That is exactly what we are hearing here; that freedom must be restrained by whom? Not by public authority or a regulatory or sports commission, but by these private profit-making individuals, for the good of the community. Well, the good of the community has not, under the American system and the antitrust laws, been entrusted to private groups making secret decisions. I will not say another word about retroactivity. I am sure you and the other members of the committee have heard enough about that. I am opposed to it, of course.

Now, if I may come to 2784 and specific critique. You raise the question about how this bill supports league power. The way it supports league power is precisely in giving the league power to make rules with regard to movement, relocation. The power to prevent is also the power to permit, and there is nothing whatever in this statute that says that a team cannot move if the other teams are in agreement.

Why would the other teams deny agreement? I note first that under this bill league rules could require unanimous agreement. Formerly, I believe, approval by three-quarters vote was enough. If the rules return to the unanimous-agreement basis, it would not be to protect the cities. The real person protected would be the team and the area to which relocation is sought, and the threatened team would have a veto over the relocation. Thus, in the Oakland case, the real purpose of protection would be to protect the Anaheim team from the Oakland Raiders moving to Los Angeles.

Furthermore, these rules would have the effect of according antitrust immunity for permitted relocations, particularly relocations authorized by the league with anticompetitive motive. For example, there is this new football league. If the National Football League were to authorize relocation of a team in an area which the U.S. Football League was thought to be about to enter, in other words, plainly a preemptive relocation, they would have an antitrust exemption. I submit that they should not have such an exemption.

In the next place, you have this Federal preemption provision in your bill. To my mind, that is explicitly anticity, not protective of the cities, but protective of the league. The league wants to get away from the local regulation which a city might make in its own interest, in order to attempt to keep a team.

Now, I am not in favor of cities having the power to keep a team. I am not in favor of Oakland having the power to prevent a steel company, or a steamship line, or any other business enterprise from leaving, although I submit, Senator DeConcini, a great deal more could be said about the public interest in keeping a big industry on hand, than in keeping the team. There is more emotion aroused in relationship to a team.

Senator DECONCINI. Excuse me, Mr. Schwartz, do you really believe that a steel company is similar to a sport team in the involvement of the community? The people that participate in a team are not working there. They are doing it for the team, which is a little different than a steel company.

In my judgment, that——

Mr. SCHWARTZ. I have two responses to make to your question, Senator.

One is, I do not think a steel company resembles a team.

Senator DECONCINI. I am glad to hear you say that.

Mr. SCHWARTZ. There are many nonresemblances. But I do not think that you will care for the difference that I observe. To be employed in a steel company is a very great deal more important to the people who are employed there, than to have the privilege of going to a football field, when you have alternatives like viewing it on the television.

Senator DECONCINI. I would not attempt to refute your statement, but that reiterates the point. We are talking about a community who has invested in a stadium, or facilities, and then the owner picks up and leaves. That is generally not the case with the steel company. They have invested themselves.

Mr. SCHWARTZ. Well, increasingly, as I am sure you know, Senator, the community invests in the steel company, through the issuance of tax-free bonds, and the like, and tax concessions, and so on.

But I do not think we have to pursue this. I think we both know the limits of that analogy.

Now, a very important critique, from my point of view, of 2784 is that there no criteria for valid league regulations are set forth. In other areas of regulation the public interest, for example Interstate Commerce Commission, Federal Securities Exchange Commission, Federal Communications Commission, there are invariably specified policy criteria to be followed.

Now, turning to the other bill, 2821, it has some criteria, which I do not find entirely satisfactory. But to have none at all when we are dealing with a situation in which regulations will be adopted in private by the people who have private profit motives for formulating these regulations, I think it is a basic shortcoming that there are no criteria in your bill.

The next shortcoming of the bill is that it does not give anybody any standing. This is another way of putting my concern about the secret formulation of the regulations. The cities and the fans for whom this legislation is supposed to be protection, they are just not present. They might be asked, or there might be some informal consultation, but nothing like the protection that would be present if we really started responsibly to regulate in the interest of these cities.

Whenever you are protecting somebody, the first step is to give him a shot at making the rules. You do not say we are going to protect you by letting the people who charge you admission make the rules for your protection. So I see the need for some form of insistence upon the presence, hearing and so forth, of the cities, players, and fans for whom protection is offered. They ought to be entitled to a statement of reasons, why a move is allowed, or not allowed. This bill does not say that Oakland would be entitled to a set of reasons if the league allowed the move.

I come now to revenue sharing. My colleague, Mr. Rubenstone, pointed out our concerns, but perhaps I can sharpen that a bit, when I say that revenue sharing inevitably is involved in restraining expansion. In the first place, a very important aspect of revenue sharing is the fee charged for a franchise. That becomes part of the treasury of the league. Therefore, it would be very much in the interest of the league to raise that admission fee, and they could do so, allegedly to promote comparable economic opportunities for everybody. They would say, well, in view of the buildup of equities by our past operation, and the advantages that you get from joining, draft advantages and others, we are going to charge you $25 million to come in. Who, under this statute, could say nay. They might also say that we are going to charge you *x* price for the privilege of relocating. Who under this bill could say nay? That also is revenue sharing.

In my judgment, in the light of my experience in antitrust cases, I cannot imagine the league negotiating with a would-be new franchisee, and not saying something to the effect that the fee is $20 million to come in, but we will make sure that nobody comes into your area to dilute the revenues that you are buying with this fee. Thus there is such a practical interweaving of expansion and comparable economic opportunities and relocation and revenue sharing that I really think the problem has not been satisfactorily solved here.

Perhaps we will both be more comfortable if I go with my critique of 2821.

Senator **DeConcini**. I am sorry, Professor Schwartz, I am going to have to call the hearings to an end. You have another 2 or 3 minutes, and then I am going to have to leave.

Mr. **Schwartz**. That would do.

The criteria in 2821 are overrigid, because they make no allowance for agreed relocation. In other words, the bill says the team shall not move if it has been there for 6 years, unless they have losses, and so forth. But suppose a case where these requirements were not met, but the team and the city came to a voluntary agreement to part.

The city might even be reimbursed for its expenses that we heard about. So that is one overrigidity.

Second, losses, which is one of the justifications for a move, are easily juggled. Mr. Rozelle so testified here.

Moreover, there is in the bill no reflection of the fact that it is quite common for a team to be operated at a loss, at least a paper loss, by men who see advantages, psychic advantages, in team ownership. They like to own a team, and they can afford it. Losses may be partially absorbed at the expense of the treasure in a conglomerate, and so on.

Third, the problem created by one team's departure could easily be solved by issuing an additional franchise, for example, in Oakland; but 2821 just says flatly you cannot move. You cannot move, even if there is an additional franchise made available, an expansion franchise in Oakland.

Furthermore, economic conditions can change so as to make it quite unrealistic for a team not to move. But there are those 27 other team owners to be persuaded they won't be hurt by relocation.

Senate bill 2821, like 2784, has no provision for hearings, no standing for the people supposedly protected, the cities, and so on. I find the bill also an invitation to further nuisances here in the Judiciary Committee, because nobody is going to stand there and say, ah, football, yes. Right down the line are the basketball people, and the soccer people, for example. In that respect, it seems to me that 2784 comprehends the problem more adequately; 2821 is just an invitation to further legislative exemptions.

Finally, there is the prospect of more litigation. You can imagine what kinds of litigation will occur, over whether, for example, the stadium is adequate, which is one of the reasons for which, under this bill, 2821, you can move. Is the stadium adequate? Was there adequate intention to solve its inadequacies? Were there losses, when losses can be juggled?

I will conclude then by saying that it is a very rare case in which the antitrust laws are sought to be amended in the interest of those who are already prosperous and powerful. We have usually had crisis exemptions proposed, or conservation exemptions, but here we have a proposal to give an antitrust immunity to a concededly monopolizing private trade association which not only has excessive power, but which has, in numerous court litigations, been demonstrated to abuse the power. Until the courts intervene, the players were peons, the cities had no forum whatsoever, every aspect of the thing was open to the self-interest regulation of the congressionally created monopoly.

So I renew, at the end, the suggestion made at the begining, do not try to write the rules yourself, do not try to give an immunity to rules that they will write, but require them, in the bill, to come forward with a reasonable set of regulations for franchising and relocation.

Senator DECONCINI. Mr. Schwartz, thank you very much. I appreciate your testimony. It will be very helpful, and I appreciate the suggestions. Although you oppose the bill, you have offered some constructive ways to continue on this course.

Thank you very much.

That will conclude the hearings on this piece of legislation.

The committee will stand in recess.

We will leave the record open for 2 weeks, for any additional testimony.

[Whereupon, at 11:55 a.m., the committee was adjourned, subject to the call of the Chair.]

[The prepared statement of Louis Schwartz follows:]

PREPARED STATEMENT OF LOUIS B. SCHWARTZ, ESQ.

I. INTRODUCTION; BACKGROUND OF WITNESS.

I have been Benjamin Franklin professor of law at the University of Pennsylvania since 1946. I have taught at Harvard, Columbia, the University of California, Arizona State University, the University of London and at the Salzburg Seminar in American Studies.

My pre-teaching experience in government includes: Securities and Exchange Commission; Antitrust Division, Department of Justice (Chief, Decree Section); member, Eisenhower National Commission To Study The Antitrust Laws; Director, National Commission On Reform Of Federal Criminal Laws.

My teaching fields are business regulation and criminal law. Business regulation includes antitrust; public utilities; communications; sports law.

My private law practice, consists principally of consultation to law firms in selected cases, i.e., those that interest me and square with my antimonopoly views. I am presently retained as a consultant by Sprague & Rubenstone and Sidkoff, Pincus, Greenberg & Green, who represent plaintiffs in Mid-South Grizzlies Joint Venture, et al. v. National Football League, et al., E.D. Pa. Civ. No. 79-4373JLM.

My publications include: Antitrust and Regulatory Alternatives (5th ed. 1977; 6th ed. scheduled for release 1983); many articles, including a review of treatises by Areeda and Turner and by Lawrence Sullivan, entitled "On The Uses Of Economics", 128 Univ. Pa. L. Rev. 244 (1979).

II. WITNESS' POINT OF VIEW.

My point of view is that of a life long student of antitrust law and a defender of free enterprise. From that point of view, I shall comment on the two bills presently pending before this Committee, S.2784 and S.2821. The two bills propose to exempt industry self-regulation from the reach of the antitrust laws, delegating to twenty-eight businessmen who now monopolize professional football discretion to determine the location (or relocation) of NFL franchises, and to determine other matters concerning forced revenue-sharing. Moreover, the same discretion would be delegated by S. 2784 to the owners of other league sport franchises.

III. MAIN POINTS TO BE MADE.

A. The antitrust laws exist to prevent private groups from taking over regulation of commerce, a power that the Constitution gives to Congress. The American tradition is that if regulation is required in the public interest, it ought to be done by a politically responsible agency and not by a private group biased by a powerful self-interest.

With respect to professional sports, if there were a genuine need to protect the public interest by limiting the franchising or relocation of teams, one would expect that the authority to regulate would be entrusted to a federal sports commission whose members would include representatives of the cities and the fans, not just the teams' owners. Moreover, and consistently with the Constitution, one would expect the authorizing legislation to lay down criteria for the exercise of that power and to provide to affected parties an opportunity for hearing. One would normally expect that the decisions of the agency would be subject to judicial review. One would also normally expect that the profits of the firms protected from competition for public policy reasons would be subject to control by the agency.

All these safeguards are lost in S.2784's loose delegation of uncontrolled discretionary regulatory authority to self-interested sports leagues. S.2821 provides some, but quite inadequate, criteria for restraining relocation of football franchises, but likewise totally fails to protect cities and fans against arbitrary denials of franchise awards and relocation (or denial of relocation) for anti-competitive purposes.

B. The "Joint Enterprise" Rule of existing antitrust law allows, without necessity for amendment, reasonable collective action by groups of independent firms. This "joint enterprise" exception pervades the antitrust laws; however, joint enterprises which limit the commercial opportunities of nonmembers have always been required under the antitrust laws to afford reasonable access to the trade and have been required to operate with reasonable procedures.[1]

C. No necessity has been shown for a broader exemption than that already available under the traditional "joint enterprise" rule. Certainly the NFL and its twenty-eight member businesses have demonstrated no financial need; indeed, the member businesses resolutely refuse to supply financial information in the detail which Congress should expect from an industry seeking anticompetitive, protective legislation, or in the detail which would justify allowing special interest groups to regulate the conditions of market expansion, franchise location (or relocation) and forced revenue sharing.

To the contrary, the recent, fabulous contract for television broadcast rights has demonstrated such an enrichment of the NFL's coffers as to give rise to the present prospect of a players' strike aimed at sharing the wealth.

D. The "entity" theory of sports leagues is a fiction. Its sole purpose is to mask a delegation of unrestricted authority to the League in order to promote the monopolists' own self-interests. It is important to note how the entity approach advocated by the NFL differs

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1/ E.g., United States v. Terminal Ry. Assn. of St. Louis, 224 U.S. 383, 32 S.Ct. 507 (1912); Silver v. New York Stock Exchange, 373 U.S. 341, 83 S.Ct. 1246 (1963); Federal Maritime Board v. Isbrandtson Co., 356 U.S. 481, 78 S.Ct. 851 (1958). See also Iranian Oil Consortium Consent Decree (membership enlarged by the court to accomodate other participants).

from the true joint enterprise. If the NFL were truly a single firm, with unified managment and consolidated capital structure and revenues, all its collective commercial dealings would escape completely from Section 1 of the Sherman Act. This is because people in a true single entity, recognized as such by law, do not agree or contract with each other with respect to the firm's business; instead, they carry out the firm's single policy pursuant to orders from the board of directors and executive officers.

But obviously, the twenty-eight member businesses of the NFL do not function that way. They have individual and conflicting policies and goals regarding investments, personnel recruitment, concessions, profitable playing locations, etc. They maintain separate entity-structures and separate books and records. They do not share liabilities. They have, even according to their own figures, vastly different financial successes. And it should be recalled that Mr. Rozelle testified against S.2821's criteria of sustained losses here on 16 August 1982 on the ground that the teams' book losses could be manipulated by the teams to mask a true profit. This is not the behavior of partners in a single entity.

Despite occasional references to the "unitary" operation of sports leagues in activities clearly calling for joint action, like scheduling of games and devising rules of play, the courts have clearly rejected the all-or-nothing approach embodied in the NFL's "entity" theory. This is illustrated by decisions like L.A. Coliseum v. NFL, Civ. No. 78-3523-HP (C.D. Cal. filed 24 July 1981) (memorandum order granting directed verdict for plaintiff against NFL on single entity issue), and North American Soccer League v. NFL, 670 F.2d 1249 (2d Cir. 1982) (NFL not a single entity). These decisions make the common sense distinction between collective action required to put on attractive season-long competitive sports contests on the one hand, and on the other hand, collective action, often amounting to a per se illegal boycott, the purpose of which is to keep qualified enterprises out of competition or to dictate to "maverick" members operating policy choices not within the necessary scope of collective action.

E. "Stabilization" is not a public policy justification for industry self-regulation. The absurdity of the NFL's demands for a blank check antitrust immunity from liability for boycott-like activity unrelated to the necessities of collective sports exhibition appears from a consideration of how the same principle would work in other industries. All businesses can and do make plausible claims about the benign effects of stabilizing their own prices and profits. Historically, such claims have been advanced in virtually every major antitrust suit, beginning with United States v. Addyston Pipe & Steel Co., 85 Fed. 271 (6th Cir. 1898). Judge, later Chief Justice, Taft rejected claims by the defendants in Addyston that their "stabilizing" activities promoted employment and the welfare of the affected communities.[2]

The NRA of the 1930s embodied this notion that public social benefits could be achieved by delegating industrial stabilization programs to private groups under nominal government supervision. The Supreme Court and the country rejected that approach. That way lies the corporate state, not free enterprise.

F. The predictable consequences of the NFL's proposed self-regulation are obvious from its prior behavior. The best way to predict what the NFL will do with a grant of immunity to antitrust liability through the delegated power of self-regulation is to consider what the NFL has done in the past even while under the threat of antitrust liability. Players were made virtual peons until the courts intervened. Worthy communities were denied teams, although by every objective test the would-be franchisee was qualified to compete and the locale was sufficient to support the franchise. Reasons for denial did not have to be given but could include personal hostility to applicants, regional biases, or simply an anti-expansionist

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2/ Compare: United States v. Socony-Vacuum Oil Co., 310 U.S. 150, 60 S.Ct. 811 (1940)("conservation"justification of private price stabilization rejected); United States v. United States Gypsum Co., 438 U.S. 422, 98 S.Ct. 2864 (1978)(purpose to avoid illegal price discrimination rejected as justification for price stabilizing arrangement).

determination not to share with additional participants the rich proceeds of a TV monopoly. At the same time, "expansion" franchises were dangled before Congress as a carrot to make more palatable the passage of special protective legislation desired by the NFL's member businesses. Owners of existing teams were denied the freedom to relocate where demand for their entertainment product was highest because other owners wished to protect their territorial interests from competition. Cities, meanwhile, have been compelled to make huge public expenditures for the benefit of the NFL's members, often under threat of loss of the presence of the franchise upon expiration of the stadium lease.

G. Particular provisions of the two proposed bills deserve comment. S.2784 purports to be a "community protection" statute, but actually does nothing whatsoever to protect a community from loss of its team, if league members or a majority of them agree that the team should be allowed to move. The bill simply validates league rules and decisions in an effort to undo the court's decision in the Los Angeles Coliseum case. Thus, whenever it is profitable for the league to move a team, it will be moved. There is no requirement of a public hearing where the city could present its case to an impartial agency. There is nothing to prevent private bargaining among league members leading to a pay-off for league acquiescence in the relocation. There is nothing to prevent extortionate demands being made on the city as compensation for not moving a team. The bill simply underwrites league power to make hard bargains with host cities. To make doubly sure that the cities cannot defend themselves, S.2784 invokes the "federal preemption" doctrine to invalidate any state or local "regulation of commerce that imposes any limitation" on league control of relocation.

And, of course, neither bill does anything for cities which presently have no team and may be or have been denied an expansion franchise arbitrarily.

S.2784 is especially loose in its delegation of power to sports leagues. No standards of fairness or reasonableness are posited. No opportunity for hearings is provided. The power to enforce rules governing relocation of franchises is unqualified and would seem to include the power to insist on large financial payments in consideration of permission to relocate. Sect. 2(1)(a). The authority to enforce rules for revenue sharing is unqualified and extends beyond any consideration of the necessity (for survival of the league) to do so. It seems also to include sharing of member businesses' revenues subject only to the vague and meaningless requirement that the rules "tend to promote comparable economic opportunities". Any such standard will defy rational application or definition.

Section 3(b) of S.2784 preserves the antitrust laws in relation to sports leagues only if there are agreements to "fix" admission prices. However, every good lawyer and businessman knows that there are numerous ways of influencing and controlling prices without "fixing" them; and it would be even more subversive of competition to allow sports leagues to fix prices _other than_ admission prices, e.g., for refreshments, player endorsements, or parking.

Section 4 of S.2784 preempts all local legislation "that imposes any limitation on the collective conduct of professional team sports leagues _or their member clubs_." This not only disallows much normal local self government, but invites extensive litigation concerning the extent of permissible local regulation.

Section 5(b) of S.2784 is particularly objectionable in operating retroactively to destroy causes of action that arose long ago while the antitrust laws were in full force, and in the legitimate pursuit of which parties plaintiff have invested large sums of money and much professional time. The proposed retroactivity provision would reach not only the verdict in the _L.A.Coliseum_ case, but also the judgment of the Court of Appeals for the Second Circuit in the _North American Soccer League_ case as well as the pending proceedings in the

Mid-South Grizzlies litigation. These three cases involve three distinctly different instances of anticompetitive conduct by the NFL, as to which a retroactive immunity seems an ill-deserved windfall. Moreover, this section's saving clause for "manifestly unjust" situations will prove to be virtually impossible to administer.

S.2821 is vulnerable to all the arguments made above with regard to entrusting public policy to industry self-regulation. The singling out of professional football teams as being somehow uniquely "affected with a strong public interest" so that relocation must be discouraged is unsupportable. One could with more justification declare a national policy to discourage the relocation of steel companies or automobile manufacturing plants; and the preference here shown football as opposed to other professional sports is difficult to understand except in terms of momentary political pressures.

S.2821 is to be commended for its implicit recognition that objective decisional criteria must be specified, if not by Congress then by judicial decision under the antitrust laws, for determining the reasonableness of anticompetitive restraints. But the very criteria proposed demonstrate the difficulty with legislative formulation of exclusive criteria.

For example, one criterion is noncompliance with a contract binding on the franchisee. One wonders why a suit for specific performance or ordinary contract damages would not suffice as a remedy for contract breach. The second criterion, as to the inadequacy of a stadium and the want of a demonstrated intent to improve, may surely be left to be worked out in the terms of the stadium lease. The third criterion of experienced losses or danger to "continued financial viability" runs into the common knowledge that book losses are manipulable. It also ignores a pervasive feature of the sports business, which is that team owners are often willing to sustain continued book losses for prestige or other collateral return. Thus, continued operation of a "loser" is often feasible through sale to such a purchaser rather than catastrophic injury to a deserted community.

20 September 1982

LOUIS B. SCHWARTZ, ESQUIRE

APPENDIX

THE NATIONAL FOOTBALL LEAGUE
410 PARK AVENUE. NEW YORK, N.Y. 10022 • PLaza 8-1500

September 8, 1982

The Honorable Strom Thurmond
United States Senate
Chairman, Committee on the Judiciary
Room 2226
Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Thurmond:

Following my testimony before the Judiciary Committee on August 16, the views of the NFL Players Association on various matters were set forth by Mr. Upshaw, the Association's President, and Mr. Garvey, the Association's Executive Director. Portions of their testimony related to labor-management matters on which the Association deals with the NFL Management Council, representing the 28 clubs in collective bargaining. Other aspects of their testimony related to activities of the NFL clubs themselves.

On a number of subjects, the NFL member clubs and the Management Council believe that the testimony of Messrs. Upshaw and Garvey was in error. At their request, I am thus submitting to the Committee the enclosed comments on that testimony. On labor-management matters, aspects of this information have been obtained from the Management Council.

We will appreciate it if this submission can be included in the hearing record.

On behalf of the League, I wish to thank you and the Committee for having afforded the League an opportunity to be heard on the important sports-community protection legislation now before the Congress.

Sincerely,

Pete Rozelle
PETE ROZELLE
Commissioner

PR:mbd
Enc.*

cc: Members of Judiciary
Committee (w/enc.)

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*Editor's Note: The enclosure submitted with this correspondence may be found in the files of the Committee on the Judiciary.

THE NATIONAL FOOTBALL LEAGUE

410 PARK AVENUE, NEW YORK, N. Y. 10022 • PLaza 8-1500

12 October 1982

The Honorable Strom Thurmond
United States Senate
Chairman, Committee on the Judiciary
Room 2226
Dirksen Senate Office Building
Washington, D.C. 20510

Re: Hearings on S. 2784 and S. 2821

Dear Senator Thurmond:

Mr. John F. Bassett, a current antitrust treble damage claimant against the NFL, testified before the Committee on September 29 along with one of his litigation attorneys, Louis Schwartz. Mr. Bassett's apparent purpose was to oppose the enactment of S. 2784. Mr. Bassett's reasons for doing so are obscure, for S. 2784 would have no effect on his own claims against the NFL, any pending lawsuits other than those involved in the Oakland Raiders proposed relocation to Los Angeles, or the NFL's relations with any other league.

There is no merit in the suggestions of Messrs. Bassett and Schwartz that the NFL somehow caused the failure of the World Football League (WFL). No WFL party ever asserted any such claim in a lawsuit or otherwise. Moreover, the Department of Justice, through the Antitrust Division, itself informed Congress in 1976 that there was no basis for concluding that the NFL illegally contributed to the WFL's failure. At that time, the Antitrust Division told the House Select Committee on Professional Sports that the Division "did not receive any complaints from former WFL teams or participants alleging anything improper on the NFL's part" and that the Division's information indicated that "the WFL's problems may have been largely due to its own business decisions and to market conditions existing at the time [the WFL] sought to become established." (Hearings at 287 (1976).)

Mr. Bassett's position is now replete with confusions and anomalies. He is a former holder of a franchise in the World Football League and a current participant in a franchise in the United States Football League. To the NFL's knowledge, these two leagues have themselves followed revenue sharing and franchise location principles such as S. 2784 would confirm. It is also anomalous that Mr. Bassett's lawsuit claims against the NFL are based on the contention that his football group deserved admission to, and full partnership status in, the very organization (i.e., the NFL) that he now roundly criticizes as "inimical to a healthy free enterprise system." When equivalent antitrust claims have been advanced, courts have summarily rejected them on the ground that such a party seeks not to compete with a league's members "but to be partners in the operation" of the league on a common basis. Levin v. NBA, 385 F. Supp. 149, 152 (S.D.N.Y. 1974).

Mr. Bassett's lawsuit claims against the NFL have other extraordinary aspects. When the NFL, in 1974, was evaluating cities for its two-team expansion, representatives of Mr. Bassett's organization informed the NFL that any League decision to expand to the city in which he was proposing to conduct football operations would be viewed as an antitrust violation. In the following year, after the NFL had selected two other cities and after the failure of Mr. Bassett's own league, his group completely reversed itself -- contending that the inability of the NFL to expand to that location would be an antitrust violation. That is the nub of his present antitrust theory.

Mr. Bassett's current complaints about the NFL also represent a complete repudiation of the view publicly expressed by the WFL in 1975, shortly after its abortive efforts had collapsed. Then, in announcing the WFL's termination, the President of that League publicly confirmed that the WFL has "the highest regard for the National Football League. Their success in promoting the game of professional football made the formation of the [WFL] possible." The WFL's President also privately wrote to me, stating in part: "I believe that the National Football League is a great credit to the industry of professional sports." The WFL's statement and letter are enclosed.

In terms of the Committee's hearing record, the testimony of Messrs. Bassett and Schwartz has no relation to the actual facts of past NFL expansion or WFL operations, as those matters are contained in public records. An authentic summary of those facts is set forth in the enclosed affidavits of Mr. Rooney of the Pittsburgh Steelers and myself.

On behalf of the NFL, we request that this letter and its enclosures be made part of the Committee's hearing record.

Sincerely,

Pete Rozelle

PETE ROZELLE
Commissioner

Enclosures*

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*Editor's Note: The enclosure submitted with this correspondence may be found in the files of the Committee on the Judiciary.

THE NATIONAL FOOTBALL LEAGUE
NFL
410 PARK AVENUE NEW YORK, N.Y. 10022 • PLaza 8-1500

November 22, 1982

The Honorable Strom Thurmond
Chairman
Senate Committee on the Judiciary
Washington, D.C. 20510

Dear Senator Thurmond:

In the Judiciary Committee's hearings during September, two witnesses who are also suing the NFL (Mr. John Bassett and his attorney, Mr. Louis Schwartz) criticized the NFL's conduct in making decisions in the mid-1970's to establish NFL expansion teams in Tampa Bay and Seattle but to decline to expand to Memphis. On October 12, I wrote to you to state the NFL's views on the erroneous and misleading statements in their testimony. I noted then that Mr. Bassett's reasons for opposing S. 2784 (The Major League Sports Community Protection Act) were "obscure, for S. 2784 would have no effect on his own claims against the NFL..."

A federal court has now squarely rejected the claims asserted in this Memphis litigation matter, fully supporting the NFL's position. The court's November 5 opinion dismissing the complaint against the NFL is enclosed. This decision confirms our views as earlier expressed to the Committee.

When Messrs. Bassett and Schwartz testified before the Committee, they suggested that, on the basis of their "personal experience" with the NFL, S. 2784 was flawed in its premise. This was so, they asserted, because the NFL supposedly acts subjectively in its decision--making on team location matters and the bill would give leagues too much discretion on such matters.

The court in the suit prosecuted by these parties has now found these criticisms of the NFL to be without support--factual or legal. Specifically, the court concluded, among other things, that the NFL "acted fairly and objectively in deciding to reject" the application for an NFL franchise in Memphis (p. 21) and that the League "had substantial business reasons to justify their decision not to plan any further expansion" at the time of the application (p. 22; emphasis added). These court conclusions directly contradict the claims of Messrs. Bassett and Schwartz that in their dealings with the NFL, the League had acted with "caprice" and decided on team location matters based on "personal hostility to applicants." The court specifically rejected such notions as based only on "speculation" or "hearsay" (pp. 23-24).

As a matter of legal principle, the court's decision also reinforces the NFL's view that a professional sports league should not be treated merely as an aggregation of horizontal business competitors. The court premises its decision on, among other things, the conclusion that the members of a sports league are "partners," not ordinary competitors, and that league members "do not compete with one another in an economic sense" (pp. 20-21) (quoting authorities). The court further found that "the production of professional sports requires joint decisions of the different teams in order to insure their continued existence" (p. 16) and that "the production of professional sports necessarily requires joint planning and decision making," because "the teams are interdependent" and "unlike normal business competitors..." (p. 27).

If we can furnish further information on this subject, we will be pleased to do so.

Sincerely,

Pete
PETE ROZELLE
Commissioner

PR/jz
Enclosure*

cc: Members of Senate Judiciary
Committee (w/encl.)

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*Editor's Note: The enclosure submitted with this correspondence may be found in the files of the Committee on the Judiciary.

NFL MANAGEMENT COUNCIL
REPRESENTING THE MEMBER CLUBS OF THE NATIONAL FOOTBALL LEAGUE

August 25, 1982

The Honorable Strom Thurmond
United States Senate
Chairman, Committee on the Judiciary
Room 2226
Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Thurmond:

The NFL Management Council is the multi-employer collective bargaining representative of the 28 member clubs of the National Football League. I am the Council's Executive Director. The Council conducts collective bargaining with the NFL players union (the Players Association) through a negotiating committee composed of five persons, including myself as chief negotiator.

On August 16, Mr. Gene Upshaw, the President of the Players Association, and Mr. Edward Garvey, the Executive Director of the Association, testified before the Judiciary Committee on the sports-community protection legislation. At that time, Messrs. Upshaw and Garvey made a number of misleading statements concerning labor-management matters in the NFL. For the present, I wish to comment only on certain misstatements concerning discussions between the Council and the union on efforts to deal with drug and alcohol issues in the NFL.

In testifying, Mr. Garvey stated, in response to a question from Senator Heflin, that the Council's negotiating committee had told the Players Association that its opposition to S. 2784 "is *the reason* why management and labor cannot reach agreement on a joint drug program to educate our people to the danger of drugs." Mr. Upshaw further testified that our committee told the Players Association that the clubs "would *never* enter into a joint program" with the Players Association because the Association was "fighting this legislation." Neither of these statements is true; each misrepresents and distorts discussions between the Management Council and the Players Association on the important question of drug and alcohol abuse.

The discussions apparently referred to by Messrs. Upshaw and Garvey occurred on July 15 in New York, the third of three days of discussions. On the previous day (July 14), I had informed the union's representatives of the Management Council's position that the current NFL player contract gives clubs the right to give players urinalysis tests for drugs, including spot checks. The clubs believe that such tests can be important both as a player and health and safety matter and to fulfill the clubs' responsibility to the public in this area. Mr. Garvey rejected the Council's position, stating that players would not participate in urinalysis testing for drug detection and that any such testing would be a unilateral change in working conditions. We disagreed.

On the next day, July 15, the union distributed a hastily prepared, handwritten Player Counseling Proposal, which we agreed to review. After reviewing this Proposal during a brief lunch caucus, we informed the union that we rejected the Player Counseling Proposal *as written*. The union then held a press conference and charged that the Council had rejected the Player Counseling Proposal out of hand.

This was untrue. Accordingly, I then held a press conference, stating that the union's proposal had been rejected *as written* because (1) it went far beyond the drug and alcohol abuse issue we had been discussing, into matters such as sex counseling and legal assistance; (2) it barred the clubs from any participation in any aspect of the proposed counseling program (in other words, it was not a *joint* program); and (3) it prohibited any type of testing for detection of a drug or alcohol problem. In that connection, I also questioned whether the Council had a relationship of sufficient mutual trust with the union to have a successful jointly administered drug program. I noted, as illustrations of why the Council believed it did not have such a relationship of mutual trust, that the union was then taking anti-NFL positions in Congress on the sports legislation, publicly charging the NFL with institutional discrimination in employment, and publicly accusing the NFL of manufacturing an article that appeared in *Sports Illustrated* concerning drug use by a former NFL player.

In summary, I can confirm that mention was made of the union's opposition to pending legislation in connection with discussions of drug abuse issues in the NFL, but I must emphatically deny the mischaracterizations of those discussions by Messrs. Upshaw and Garvey in their testimony before the Judiciary Committee. These matters are, I believe, too important to the public, to NFL players, and to the NFL itself to be made the subject of loose and false misdescriptions in congressional testimony.

I appreciate this opportunity to address the Committee, and if you or the Committee have any questions concerning these matters, I will be pleased to respond.

Sincerely,

Jack Donlan
Executive Director

JD:zlk

NFL Management Council

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October 29, 1982

Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
2226 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Sports Antitrust Hearings

Dear Mr. Chairman:

Recently, the National Football League submitted lengthy comments to the Committee challenging testimony presented by the NFL Players Association (NFLPA) on August 16, 1982. Although the League's voluminous submission covers a number of topics, we believe it would serve no useful purpose to respond in detail to every issue raised.

There is one subject which is pertinent to the Committee's deliberations, however, which deserves specific rebuttal. It concerns the NFL's misuse of antitrust exemptions in federal court and illustrates the danger inherent in granting additional immunity to the sports monopoly. The League disputes the Players Association claim that it misused the 1966 merger exemption in the Mackey case, Mackey v. National Football League, 407 F.Supp. 1000 (D.Minn 1975), 543 F.2d 606, (8th Cir. 1976), cert. withdrawn, 434 U.S. 801 (1977), by defending in part that Congress had immunized the compensation system - so-called Rozelle rule. But the record supports the NFLPA claim.

We attach to this letter excerpts from the NFL's Answer and Trial Memorandum in the Mackey case. The NFL's Eighth Defense to the plaintiff's claim that the Rozelle Rule violated the antitrust laws was the merger exemption statute of 1966. Despite League statements to the Congress in 1966 that the merger statute only exempted the act of merger, "Professional Football League Merger," Hearings before Antitrust Subcommittee, Committee on the Judiciary, 89th Cong. 2d Sess. (1966) at 77, in federal court in 1972 the League did not hesitate to legitimize their practices by pleading the statute as a defense to an antitrust violation. These efforts were flatly contradictory to representations made by the League to congressional committees about the "narrowness" of the merger exemption. It is a forceful example of the misuse of immunity by the NFL.

The NFL's statement to the federal court in its Trial Memorandum is also instructive. It refers not only to statutes enacted by Congress but to bills introduced in Congress as reflecting how the Congress believes the cartel should be treated.

> "These and similar Congressional laws, proposals, and findings are significant not in terms of whether the antitrust laws are applicable to the NFL defendants but in terms of how Congressional Committees, after exploring the relationships, have believed they should be applied."

Trial Memorandum, p. 8, fn. 1 (emphasis in original)

In other words, the League will use any antitrust exemptive proposal to stretch the Rule of Reason to persuade a court that it is entitled to special, unique treatment. This type of conduct places additional substantial burdens on plaintiff's who sue the League to enforce the antitrust laws and renders successful challenge of anti-competitive conduct much more difficult.

It is this misuse of antitrust exemptions in the past that contributes to the Players Association's opposition to the latest NFL effort to obtain favored treatment under the antitrust laws. Fortunately, in the Mackey case the players were able to overcome the League's representations to the court which were diametrically opposite to those made to Congress, six years earlier. But the law suit was expensive, arduous and time-consuming. The expense of that litigation nearly broke the Players Association. The clear lesson is not to grant further immunity to the sports cartel.

We respectfully request that this letter and attached materials be made part of the Committee's hearing record. The trial experience described herein forcefully underscores the danger that inhere in granting further antitrust exemption to the NFL. For these and other reasons, the NFL Players Association remains opposed to S. 2784.

We thank you Mr. Chairman and the Committee for your consideration of the Association's views.

Respectfully,

Landis, Cohen, Singman and Rauh

Benjamin L. Zelenko

BLZ:jc
Enclosures
cc: All Members of
Judiciary Committee (w/encl.)

23

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

JOHN MACKEY, et al., :

Plaintiffs :

vs. : 4-72 Civ. 277

NATIONAL FOOTBALL LEAGUE, et al., :

Defendants. :

ANSWER TO SECOND AMENDED COMPLAINT OF DEFENDANTS NATIONAL FOOTBALL LEAGUE AND PETE ROZELLE

The defendants National Football League, an unincorporated association, and its Commissioner, Pete Rozelle (hereafter "these defendants"), by their attorneys hereby answer plaintiffs' Second Amended Complaint as follows:

First Defense

COUNT ONE

In response to the specific allegations of plaintiffs' complaint, these defendants admit, deny and allege as follows:

1. Deny that they have violated the antitrust laws as alleged or that plaintiffs have suffered any damages or are entitled to any relief whatsoever.

2. State that they are not required to answer the conclusions of law set forth in paragraph 2 of the complaint and, to the extent that alleged facts are implied therein, such alleged facts are denied.

3. State that they are not required to answer the conclusions of law set forth in paragraph 3 of the complaint and, to the extent that alleged facts are included therein,

or relates to the interpretation or the application of any provision of the Standard Player Contract, the NFL Constitution and By-Laws, or the Collective Bargaining Agreement is barred by plaintiffs' failure to exhaust the collectively bargained grievance procedure.

Sixth Defense

Plaintiffs have no business or property subject to injury. If said persons do have any such business or property, said business or property was not injured by any acts or practices of these defendants relative to the employment or the terms or conditions of the employment of plaintiffs as professional football players.

Seventh Defense

Plaintiffs lack standing under applicable statutes and principles of law to bring and maintain this action against defendants.

Eighth Defense

Any acts or practices which these defendants may have performed in implementing plans for an expanded single league under Public Law 89-800, 80 Stat. 1515 (1966), 15 U.S.C. § 1291 (1968), were and are not subject to the antitrust laws.

Ninth Defense

All claims which accrued prior to May 26, 1968, are barred by the Federal four-year statute of limitations, 15 U.S.C. § 16(b).

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA
FOURTH DIVISION

JOHN MACKEY, ET AL.,
Plaintiffs,
v.
NATIONAL FOOTBALL LEAGUE, ET AL.,
Defendants.

Civil No. 4-72-277

TRIAL MEMORANDUM OF NFL MEMBER CLUB DEFENDANTS ON THE "RULE OF REASON" ISSUE[1]

Plaintiffs' second amended complaint asserts that Section 12.1(H) of the NFL Constitution and By-Laws (the principle of League operations which the League refers to as the option-compensation clause) represents a violation of the antitrust laws.[2] Plaintiffs contend that defendants, by adopting and maintaining this provision, have conspired to restrain trade and to refuse to deal and to boycott players who have played out their options (Second Amended Complaint, Count I, ¶¶ 11-16; Count II, ¶ 2).

Whatever the merits of this claim, it is clear that the challenged principle of NFL operations does not represent a *per se* violation of the antitrust laws. No litigated cases support an evaluation of Section 12.1(H) or any other basic principle and professional (including the former American Football League) had dealt jointly in the sale of their member club television rights without encountering any objection from the Antitrust Division (S. Rep. No. 1087, 87th Cong., 1st Sess., at 21(1961)). Other sports leagues not currently within the statute are exercising the joint dealing privilege today.

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[1] In addition to this Trial Memorandum, defendants are simultaneously filing a separate trial memorandum on the collective bargaining and labor law defenses in this case.

[2] Under the option compensation clause, an NFL member club which contracts for the services of a player whose contract with another club has expired must negotiate with the club losing the player's services some form of compensation in player rights to be transferred to the latter club. If the two clubs involved are unable to agree on the form of compensation, the NFL Commissioner has the responsibility for determining such compensation. See part II(E) *infra*.

Other Congressional recognition of the special rules of professional sports leagues include a report of a subcommittee of the Senate Judiciary Committee under the chairmanship of Senator Hart, containing the following comments:

> "The uniqueness of the business of competitive team sports grows out of the public interest in teams which are as competitively equal as possible, and the responsibility of the 'league' of teams in maintaining both competitive balance and geographic balance. Without competitive and geographic balance, the leagues and their weak teams are unable to attract and hold the public interest which is necessary for their survival. It is also necessary that the league practice sufficient self-policing so that the public can be assured of the integrity of sports contests." S. Rep. No. 1303, 88th Cong., 2d Sess., at 6 (1964) ("Applicability of the Antitrust Laws to Certain Aspects of Designated Organized Professional Team Sports").

At various times, both the full Senate and the full House have approved antitrust exemptions for the internal operations of sports leagues. 104 Cong. Rec. 12081-12105 (1958); 111 Cong. Rec. 22327-22329 (1965). Still further, Congress, in 1966 enacted a statute specifically authorizing a combination of the only two professional football leagues then operating within the United States. (Pub. L. 89-800, 15 U.S.C. § 1291).[1/]

[1/] These and similar Congressional laws, proposals, and findings are significant not in terms of whether the antitrust laws are applicable to the NFL defendants but in terms of how Congressional Committees, after exploring the relationships, have believed they should be applied.

United States Department of Justice

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

WASHINGTON, D.C. 20530

NOV 29 1982

Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter is in response to your request for the views of the Department of Justice on S. 2784, the "Major League Sports Community Protection Act of 1982." The Department recommends against enactment of this legislation.

Summary of the Legislation

S. 2784 would create certain special exemptions from the antitrust laws for professional team sports. Section 2 of the bill provides that it shall not be unlawful under the antitrust laws for a professional team sports league 1/ and its member clubs "to enforce rules authorizing the membership of the league to decide that a member club of such league shall not be relocated" or "to enforce rules for the division of league or member club revenues that tend to promote comparable economic opportunities for the member clubs of such a league."

Section 3 of the bill would place certain limitations on the special antitrust exemptions created by section 2. Section 3 provides that nothing in the legislation shall be deemed to affect the applicability of any provision of law, including particularly the antitrust and labor laws, to wages, hours, or other terms or conditions of player employment or to other player employment or player union collective bargaining matters. Section 3 also provides that the bill shall not exempt from the antitrust laws any agreement to fix the price of admission to sports contests or

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1/ "Professional team sports league" is defined in section 6 of the bill as "the organized professional team sports of basketball, football, hockey or soccer."

any predatory practice or other conduct with respect to competing sports leagues. Finally, section 3 provides that the bill shall neither modify existing federal statutes relating to the television practices of professional sports leagues, or affect the applicability of the antitrust or communications laws to joint dealing practices by sports leagues "with respect to the sale of cable or subscription television." 2/

Section 4 of the bill provides that the states and their political subdivisions shall not limit "the collective conduct of professional team sports leagues or their member clubs authorized by this Act." Section 5 provides that the bill shall apply to antitrust actions commenced after the date of enactment, as well as those commenced prior to the date of enactment unless (1) the judgment is "final and unappealable" on or before enactment or (2) the court determines that it would be manifestly unjust to apply the Act to the unresolved claim of any party not a member club in a case in which a release or covenant has been signed prior to enactment of the bill.

Effect on Existing Law

S. 2784 would change existing law by exempting from scrutiny under the antitrust laws two broad classes of sports league practices--any and all league rules authorizing the league membership to decide that a member club may not relocate, and any and all revenue pooling arrangements that tend to promote comparable economic opportunities for member clubs. At present, these practices, like most other league practices, are subject to the antitrust laws, including Section 1 of the Sherman Act which prohibits contracts, combinations and conspiracies in restraint of trade. 3/ *See, e.g., Flood v. Kuhn*, 407 U.S. 258, 282-83 (1972); *Radovich v. National Football League*, 352 U.S. 445 (1957); *San Francisco Seals Ltd. v. National Hockey League*, 379 F. Supp. 966, 968 (C.D. Cal. 1974).

2/ This provision of section 3, together with section 2 of the bill, leaves the effect of the bill on cable or subscription television practices somewhat unclear. It may be that while the bill would exempt league arrangements governing the *pooling* of members' cable or subscription television revenues, it would not affect the applicability of the antitrust laws to *joint dealing practices* involving the sale of cable or subscription rights.

3/ Exceptions include the anomalous baseball exemption (*see* Flood v. Kuhn, 407 U.S. 258 (1972)) and the statutory exemptions relating to league sales of sponsored telecasting rights and to the 1966 merger of the National Football League and American Football League (*see* 15 U.S.C. §§ 1291-1295).

Current law requires courts examining the practices of sports leagues under the antitrust laws to apply straightforward antitrust rules in a manner that accommodates the particular characteristics of professional team sports while promoting the important competitive, consumer welfare objectives of those laws. Perhaps the most basic of these antitrust rules is the "rule of reason," under which the alleged anticompetitive features of a challenged practice or agreement are measured and weighed against procompetitive justifications. If, after such analysis, the practice or agreement can be said to be reasonable in the commercial context, and no more restrictive than necessary, then it will not be held to be a violation of the antitrust laws. This standard has been applied in recent years in private litigation involving alleged restraints on the ability of players to negotiate freely with professional sports teams. See Smith v. Pro Football League, 593 F.2d 1173 (D.C. Cir. 1978); Kapp v. National Football League, 586 F.2d 644 (9th Cir. 1978), cert. denied, 441 U.S. 907; Mackey v. National Football League, 543 F.2d 606 (8th Cir. 1976), cert. dismissed, 434 U.S. 801 (1977).

The Mackey case is illustrative of how courts, in applying the rule of reason, can give careful consideration to the nature of a sports league and to its asserted justifications for the practices being challenged. In that case, plaintiffs challenged the NFL's so-called "Rozelle Rule," which formerly governed the compensation due a team that had lost a "free agent" to another team. In evaluating the Rozelle Rule, the Mackey court addressed the league's asserted justifications, including the argument "that without the Rozelle Rule . . . competitive balance throughout the League would . . . be destroyed; and that the destruction of competitive balance would ultimately lead to diminished spectator interest, franchise failures, and perhaps the demise of the NFL, at least as it operates today." 543 F.2d at 621. The Mackey court stated: "We do recognize, as did the district court, that the NFL has a strong and unique interest in maintaining competitive balance among its teams. The key issue is thus whether the Rozelle Rule is essential to the maintenance of competitive balance, and is no more restrictive than necessary." Id. The court analyzed in some detail the nature and operation of the Rozelle Rule before holding that the Rule, as then enforced, unreasonably restrained trade in violation of the Sherman Act. But the court noted that "our disposition of the antitrust issue does not mean that every restraint on competition for players' services would necessarily violate the antitrust laws." Id. at 623.

The type of analysis that the Mackey court performed is consistent with proper antitrust analysis of joint ventures. Such an analysis recognizes that some consultation and cooperation among firms in a joint venture can often enhance competition and consumer welfare by, inter alia, facilitating the provision of a basic product to the public, in competition with products provided by those outside the venture, including other similar joint ventures. Such analysis would recognize that sports leagues require consultation and agreement among their constituent teams with respect to, for example, the rules of play and the scheduling of games.

At the same time, however, joint venture analysis recognizes that, depending in part on the degree to which a particular venture faces actual or potential competition from others outside the venture, unnecessary elimination of competition between the members of the venture can present cognizable antitrust problems. In the case of professional football, where the merger of the two directly competing leagues has been sanctioned (see 15 U.S.C. § 1291), this concern for intra-venture competition is heightened. Thus, an admitted need for some cooperation among members of a joint venture does not necessarily justify any and all of their cooperative arrangements. The desirability of preserving a number of joint ventures rather than permitting consolidation, whenever that course is practicable, is evident.

There is, at the present time, relatively little law regarding the application of appropriate antitrust standards to the classes of practices that would be exempted from antitrust scrutiny by S. 2784. Current interest in the bill appears to be in part a reaction to the recent jury verdict in the Oakland Raiders case, Los Angeles Memorial Coliseum v. National Football League, No. 783523-HP (C.D. Cal., May 7, 1982). In that case, a jury found a National Football League rule that was invoked to block the move of the Oakland Raiders to the Los Angeles Memorial County Coliseum to be an unreasonable restraint of trade in violation of the Sherman Act. 42 Antitrust & Trade Reg. Rep. (BNA) 1160 (June 3, 1982). The specific rule in question required approval of three-fourths of the league owners before a team could relocate. The Raiders case is presently pending in the Ninth Circuit, and the Department of Justice does not comment extra-judicially on the merits of pending private lawsuits. In considering the current state of the law regarding franchise relocation, however, two points concerning the Raiders litigation should be remembered: first, it is our understanding that the jury verdict condemned only the particular league rule on franchise relocation that was before it and not all possible league restraints on relocation; second, the case is on appeal.

League restrictions on franchise relocation have been challenged and upheld in another professional sports context. In San Francisco Seals Ltd. v. National Hockey League, 379 F.Supp 966 (C.D. Cal 1974), the court disposed via summary judgment of plaintiff's Section 1 challenge to the NHL's denial of its request to move from the San Francisco area to Vancouver, British Columbia, a community which at the time had no NHL franchise. 4/ The Seals court reasoned that within the relevant market at issue (which it defined as the production of professional hockey games before live audiences in the United States and Canada), the Seals and other NHL teams were not competitors in the economic sense but rather "members of a single unit competing as such with other similar professional leagues." 5/ Id. at 969-70.

With respect to revenue pooling by sports leagues, Congress in 1961 exempted from the antitrust laws agreements by which the member clubs of a professional football, baseball, basketball, or hockey league pool their separate rights in the "sponsored telecasting" of their games and sell those pooled rights to one or more purchasers, such as television networks. 15 U.S.C. § 1291. 6/ Such agreements, including agreements among the teams in a league on how to divide the revenues received from the sale of those pooled television rights, have been used by the

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4/ The fact that the Raiders, unlike the Seals, were attempting to move into another team's home area was cited by the district court in the Raiders litigation as a factor distinguishing the two cases. See 519 F. Supp. 581, 585 (C.D. Cal. 1981) (decision denying directed verdict).

5/ The rival World Hockey Association has since folded, with some of its teams joining the NHL.

6/ The legislative history of this provision indicates that Congress was reacting to the decision in United States v. National Football League, 196 F. Supp. 445 (E.D. Pa. 1961). See S. Rep. No. 1087, 87 Cong., 1st Sess. In that case, the court reviewed an arrangement by which the NFL clubs pooled their television rights and sold those exclusive rights with revenues to be divided equally, and held that the arrangement violated the court's 1953 judgment entered in an antitrust case brought by the government challenging certain of the television and radio practices then employed by the NFL. The judgment enjoined the league and its clubs from making any agreement "having the purpose or effect of restricting the areas within which broadcasts or telecasts of games . . . may be made." 196 F. Supp. at 447; see United States v. National Football League, 116 F. Supp. 319 (E.D. Pa. 1953). The Senate Report indicates that it was Congress' view that legislation was needed in order to allow NFL clubs to act in concert to assure clubs with weak teams or limited home territory television markets an adequate amount of television coverage and income, so that the structure and continued operation of the league would not be imperiled.

sports leagues over the years to an extent that varies according to the sport. We are unaware of any case law regarding the pooling of other revenues by professional sports leagues.

To summarize, existing law allows antitrust scrutiny of most professional sports league practices, including existing or potential league rules regarding franchise relocation and at least many types of revenue pooling. The law requires a reasoned judicial approach to such practices under straightforward antitrust principles, including the "rule of reason." Only a few of the practices addressed by S. 2784 have been subject to antitrust scrutiny, and these have encountered mixed and as yet indeterminate results. S. 2784 would, with only extremely limited possible exceptions, proscribe antitrust review of all professional sports league rules imposing restraints on franchise relocation that exist now, or may exist in the future, as well as a similarly-broad category of possible revenue pooling arrangements.

Discussion

Special new antitrust exemptions protecting any and all professional team sports league rules imposing restraints on franchise relocations and a broad category of undefined revenue pooling arrangements have not, in the Department's view, been justified. The antitrust laws embody the nation's fundamental national economic policy favoring competition, and are flexible enough to accommodate the legitimate interests of professional team sports. Recognizing this fundamental importance and flexibility, the courts do not lightly imply antitrust immunity, and construe statutory exemptions narrowly. The legislative approach to proposed antitrust exemptions has been and should continue to be similarly cautious; Congress has generally required strong showings of highly unusual and compelling circumstances before seriously considering affording a given industry special and privileged treatment under the antitrust laws. We do not believe that such circumstances as to support enactment of S. 2784 exist.

First, we continue to believe that the antitrust laws, as passed by Congress and as interpreted by the courts, do not prevent sports leagues from engaging in activities that are competitively neutral or procompetitive. Existing antitrust doctrine, including that found in team sports cases, requires consideration of the real "business stuff" 7/ of which league practices consist before they can be condemned under the antitrust laws. Notwithstanding the jury's verdict in the Raiders case, we do not

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7/ See White Motor Co. United States, 372 U.S. 253, 263 (1963).

consider the legality of all rules restraining franchise relocation to have been thoroughly adjudicated. The final result in that case has yet to be determined, and there has been no demonstration as to how the antitrust laws would affect in other factual contexts the wide variety of other potential rules restraining franchise relocation that would be protected by S. 2784. Similarly, we are unaware of any showing of an inappropriately hostile judicial reception to revenue pooling arrangements that might be tested under extant antitrust rules. Simply put, the current state of antitrust law regarding the legality of professional sports league franchise relocation rules and revenue pooling is not such as to demonstrate or even strongly suggest that the courts will be unwilling or unable to come to reasonable conclusions in this area.

Second, we do not accept the argument that, even if the courts are able to apply the antitrust laws properly to franchise relocation rules and revenue pooling, until they do leagues will be deluged with meritless antitrust challenges or forced to alter their behavior in ways that are inimical to legitimate league interests or those of the consuming public. We are aware of little evidence to support this argument; we see no reason to believe that absent the exemption regarding relocations, franchise relocations would be widespread or that whatever relocations may occur would threaten league viability or success. In any event, legislation designed merely to short circuit the judicial antitrust process necessarily assumes that none of the exempted practices could or at least should ever be found to violate appropriate antitrust standards. We believe that the record on the possible competitive effects of the broad classes of relocation rules and revenue pooling arrangements that would be protected by S. 2784 is insufficient in this regard.

Third, we are not aware of any showing that the antitrust laws--properly applied to franchise relocation rules or revenue pooling--will have perverse societal effects. The objectives of the antitrust laws--to prevent private conspiratorial or monopolistic behavior that interferes with the competitive process and thus prejudices delivery of the best possible products to consumers at the lowest possible prices--appear fully consistent with the interests of both producers and consumers of professional team sports. 8/

8/ A variety of community welfare arguments have been raised in connection with the proposed legislation, regarding both the interests of cities in danger of "losing" a team and those that

[footnote continued on next page]

In sum, we believe that the antitrust exemptions proposed by S. 2784 are unwarranted and unwise. Existing precedent is not sufficient to warrant the conclusion that the standards of the antitrust laws are insufficiently flexible to accommodate procompetitive, legitimate professional sports league interests. And there is no showing that appropriate antitrust results will be inconsistent with ultimate social goals in this area. Accordingly, the Department of Justice recommends against enactment of this legislation.

I would like to take this opportunity to note our concern with the increasing frequency and similarity of arguments made to Congress by various industries that the standards of the antitrust laws are too rigid to take account adequately of their peculiar characteristics and legitimate interests. The common thread of these arguments is that the courts have occasionally lost sight of the procompetitive, consumer oriented goals of those laws and conducted unduly narrow analyses of the real competitive effects of challenged practices. We believe that it would be better to consider this question from an overall standpoint, rather than continue to debate the merits of a wide variety of special antitrust rules covering special industries or situations.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

(Signed) Robert A. McConnell

Robert A. McConnell
Assistant Attorney General

[footnote continued]

might "gain" a team as a result of franchise relocation. It is important to note, however, that immunizing from the antitrust laws league restraints on franchise relocation would not really resolve these arguments. The antitrust exemption provided by S. 2784 would, in a very real sense, merely delegate the accommodation of the competing community interests involved to a group of private entrepreneurs with an interest--entirely legitimate--in maximizing the profits of their enterprise.

STATEMENT OF COLIN P. FLAHERTY

Chairman of the Stadium Committee

INTRODUCTION

Mr. Chairman; I'm Colin Flaherty, Chairman of the Stadium Committee in San Diego, California. Thank you for inviting us to testify here today on S. 2784 and S. 2821. The Stadium Committee is an independent group of San Diegans that was formed to work for the expansion of the Jack Murphy-San Diego Stadium which for several years has been too small for the most exciting team in professional football: the San Diego Chargers. We began our efforts with a thorough study of the use and financing of the stadium to see if an expansion could be justified. As part of our study we did a survey of all the major stadiums in the country in order to establish some standards that we could use to evaluate the operation of the Jack Murphy-San Diego stadium.

The testimony given so far has cited the large investment that cities have in their stadiums as one reason for this legislation. However there has been no testimony on the details of these investments. Our research on the nature of these investments and the different results that different cities have had protecting their investments have a direct bearing on the legislation being considered here today. We feel before the Congress considers how to protect local governments from the whims of a sports entrepreneur, you should first consider what they are doing to protect themselves. Anti-trust immunity, revenue sharing, and public investment in stadiums and other issues make this a very complex issue. Our testimony will be limited to the public investment in sports facilities.

The first-thing we found out is that in the Alice in Wonderland world of sports economics, many things are not always what they appear to be. For example, ask a public stadium operator what the financial condition of his stadium is and he may give you a figure and call it a surplus. Rarely does this figure include the annual payments on a bond debt. Thus a stadium with a so called surplus may end up making the city 1-2 million dollars poorer. A professional sports team, on the other hand is given to making public statements about how much money they are losing. These "losses" are often the result of unusual tax allowances that no other industry in the world enjoys. An owner with millions of dollars of so called losses may have a million more dollars at the end of a season than at the beginning.

Thus the people that are making money claim they are losing it and the people who are losing money claim they are making it.

The second thing we found is what we couldn't find out. Few of the nations publicly operated stadiums keep adequate records of the use of their stadium. Very few of the stadium operators knew how many days a year their stadium was used, what percentage of the seats are filled or what other cities are doing with their stadiums.

Every stadium has unique agreements with its tenants governing revenue from concessions, rent, parking, etc. When the House Select Commitee on Professional Sports made a request to see the lease revenue arrangements they received replies that were cryptic and even hostile. According to Parade magazine Arlington stadium claimed they were secret and accused the Committee of trying to destroy professional sports.

Our luck was not much better. A typical answer was the information we requested would take days to gather and they didn't have the time. Isn't it strange that local governments that are so quick to ask the Congress for help in managing their stadiums don't even use the most rudimentary management techniques to administer their stadium?

Any business that sells seats like an airline or bus company that didn't know at what percentage of capacity it was operating wouldn't be in business for long. But it certainly would be replaced by someone who did know.

THE TOTAL COSTS OF A STADIUM

Since the costs to local governments is a major reason for this legislation we should take a closer look at the total costs of owning and operating a stadium. As the mayors testified last month the cities do have a large amount of money tied up in their stadiums. But the mayors were being uncharacteristicly modest. The costs to taxpayers of operating a major stadium is much larger than they said. As you know the direct cost to local governments is the operating expense as well as the annual payment on the bond debt. At least 60-70% of the stadiums receive public subsidies to help it meet it's bond debt.

The mayors ignored the indirect but very real costs that a stadium can inflict. I'll list a few:

1). Foregone use of the land.

2). Public improvements adjacent to a stadium such as streets lights, public utilities etc.

3). Unusual tax breaks. Virtually all of the luxury skyboxes and many of the season tickets in a stadium are corporate owned and written off as a business expense for tax purposes.

Another unusual tax break that increases the public's cost for the operation of the stadium is a depreciation allowance for players wages. There is no other business in the world where wages are depreciated for tax purposes. Bill Veeck is quoted in his classic The Hustlers Handbook as saying, "Look, we play the Star Spangled Banner before every game, you want us to pay taxes too.?" The incentives for productivity and efficiency are a vital part of our national economy. Tax breaks to see a football game aren't.

4). Time is another expense. Because of its high visibility, local public officials spend a lot of time discussing stadium affairs. How much is the time of all those public officials worth? Honest men disagree on that.

There are many major costs of a stadium that are indirect and never show up on a balance sheet.

But what about benefits? Previous witnesses have extolled the benefits to a community of a major league stadium and it's true there are many. Any Chamber of Commerce is more than willing to recite their estimates of the gross benefits that a professional team brings. But this too deserves a closer look.

It has never, I repeat never been shown that the total benefits outweigh the total costs. Never. Not only are the net benefits overestimated, the ones receiving the benefits are not the ones bearing the cost.

Most cities have paid a very high price to subsidize their stadiums.

Virtually all of the more than 50 stadiums built in the last twenty years were supposed to make money for local governments. Instead stadiums are a burden to most cities. Some cities deserve special mention.

New York, for example. The City of New York bought Yankee Stadium and refurbished it. It cost $95.6 million, 4 times the original estimate. When it came time to collect the rent, the City was surprised to find that they had to pay the Yankees $10,000. They had negotiated a lease that permitted them to take so many deductions that the city ended up paying them to play. With the money they spent to improve the stadium they could have bought several baseball teams.

In Buffalo, the Bills demanded that their home stadium be expanded. The City of Buffalo enlarged War Memorial Stadium. That wasn't good enough. The owner of the Bills said, "He had no alternative to moving", unless given a new and bigger stadium. So Buffalo built another stadium. "The city now pays off bonds on an abandoned stadium that it improved expressly for the Bills, while the County pays on bonds for new Rich Stadium."

In his testimony last month, Commissioner Rozelle claimed the Bills demonstrated commitment to fan and community service. But Buffalo's corporate counsel, Leslie Foschio, claimed the city was whipsawed.

The Louisiana Superdome stood out as the textbook example of how not to build or operate a stadium. The stadium cost $163 million to build, 5 times the original estimate. When their stadium was completed their problems were only beginning. The concessions were poorly located, slow and losing money. A promoter had to deal with as many as 12 different people. It was overstaffed. Bills weren't being paid on time, accumulating thousands of dollars in late charges. Maintenance was shoddy. There was a costly legal battle because the structure was literally sinking in the soft Louisiana soil. Public management of the Superdome was an administrative nightmare that was costing the taxpayers of Louisiana $6 million in operating deficits and $10 million in bond payment a year.

If the picture we've painted isn't depressing enough, we can go on with Baltimore, Seattle, Detroit, Washington, Arlington, Kansas City, Pittsburg, and on and on and on.

According to Bernie Sisk, the former Chairman of the disbanded House Select Committee on Professional Sports, "A lot of cities would be embarrased if people knew how much their stadiums really subsidize pro teams."

It's worse than most people realize. But what we came three thousand miles to tell this committee is that it doesn't have to be that way.

Some places give us reason to believe that stadiums can be operated without huge public subsidies. And its an embarrasingly simple solution: the cities should either sell their stadium or turn them over to private management who has incentive to put the stadiums to their fullest and best use.

In all fairness its important to note that a stadium is a very complex mixture of its market, size, construction, management, tenants, location and climate. Making flat judgements about all stadiums based on some absolute national standards of financing and use would be misleading. But is is very important to realize that different cities have had very different results with their stadiums.

Our nation's public stadiums are underused and overstaffed because of public management that has no incentive to reduce costs or raise expenses.

San Diego Sports Arena for example, was in deep financial trouble in 1971. Back taxes were due, bills were unpaid, it looked like the county was going to take over, costing them about $250,000 a year. Then private management came in, took over the lease, paid the bills, raised revenues, reduced expenses and the arena was back in busines. They haven't had a penny of public money in ten years.

The most instructive example is New Orleans. This exemplifies the the best as well as the worst. As I testified the Louisiana Superdome was a nightmare that didn't seem to have an ending. After one year of operation, the Superdome accepted bids for the private management of their facility. The Hyatt Management Company of Arlington, Va. was selected to take over. They immediately cut the payroll and renegotiated contracts with the vendors. They raised revenues by increasing the number of events and promoting those events more effectively. Soccer, for example. They placed Spanish ads targeted at New Orleand Hispanics and increased attendance at the soccer games. They squeezed every bit of use from the Superdome that they possibly could. They had to. What they earned was tied to how much they reduced the operating deficit. The first year they cut the operating deficit by 50%. Since 1977 they have saved the state of Louisiana more than $20 million.

Jack -Murphy San Diego stadium discourages extra use by setting up costly and time consuming barriers. In order to have an event at the stadium, an entrepreneur has to deal with stadium operators, stadium authorities, City Council, and the City Manager. It is clear that such an arrangement is not conducive to putting a stadium to its fullest and best use. This is not an exception but a rule.

Mr. Chairman, the cities are asking the Congress for protection that they themselves have been unwilling but not unable to give.

RECOMMENDATIONS

We believe that before federal legislation is appropriate local authorities should take several steps:

1) The cities have to become more accountable for the operations of their stadiums. Our Committee believes that the only way for a city to become free from the threat of franchise movement is to sell their stadiums, then the marketplace could decide how important professional sports are. Only then would people who use the stadium would be forced to pay for it. Who

would buy them? Maybe the professional sports teams would. Bill Veek sums up the benefits, "I believe I'm the only one in baseball who has operated both ways; in a civic stadium in Cleveland and my own parks in St. Louis and here (Chicago). I wouldn't want to go back to saying, 'Please, can I do something to a ballpark?' And remember, we're on the tax rolls. We're a giver and not a taker."

Because local officials don't want to lose control of their stadiums, no matter what the price, it isn't realistic to expect them to sell them. The San Diego Sports arena has been operating in the black for the last ten years, yet even as late as last month a San Diego Councilwoman was quoted as saying she was displeased with the arrangement at the Arena because the city had lost control over it. That is a bad attitude.

2) An alternative to the cities selling their stadiums or putting them under private management would be to form an association of local governments that would bargain as a unit with the pro sports leagues. Clearly, the threat of a franchise moving has been a powerful negotiating tool that has helped the franchise owners achieve contracts with the cites that are very beneficial to the owners. But there is also a tremendous gap in negotiating skills that has contributed to the many one sided settlements. Men like Al Davis, Gene Klein, George Steinbrenner are some of the shrewdest and most successful businessmen in the country. When they go one on one with bureaucrats in negotiating contests you don't need Howard Cosell to tell you that it is no contest.

A union of professional sports league cities with professional negotiators bargaining as a unit could be a very effective bargaining tool for the cities who feel intimidated by franchise threats.

CONCLUSION

The Mayor of Pittsburg testified that the reason for this legislation is that "cities will not be saddled with the burden of millions of dollars of debt service payments on unused public stadiums." The fact is if this legislation becomes law the publicly owned stadiums are still going to be losing money. Until barriers are removed, incentives restored and government control gives way to private management, cities are going to be paying dearly for their stadiums for a long time.

Professional sports has become a pervasive and lucrative part of our national life. We feel the more popular sports becomes the less reason there is for continuing professional sports subsidies. The losses that cities have incurred are essentially self-inflicted and do not warrant a federal remedy at this time.

Again, I thank you for the opportunity to testify here today. I would be happy to answer any questions.